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No. 45476-9-II

STATE OF WASHINGTON

DIVISION II COURT OF APPEALS
OF THE STATE OF WASHINGTON *c*
DEPUTY

TED SPICE AND PLEXUS DEVELOPMENT, LLC,

Appellants,

v.

PIERCE COUNTY, a political subdivision, and
CITY OF PUYALLUP, a municipal corporation

Respondents.

REPLY BRIEF OF APPELLANTS/PETITIONERS
TED SPICE AND PLEXUS DEVELOPMENT, LLC

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I. REPLY TO PUYALLUP'S COUNTER STATEMENT ALLEGING FACTS

Instead of providing the Court well-reasoned legal analysis, Puyallup begins its Response Brief with a litany of misplaced complaints and continual innuendo about Appellants and Appellants' counsel, all of which are ill-founded, and/or just plain wrong. For instance, Puyallup describes the numerous pleadings and motions filed, implying Appellants were responsible for the "churning"¹ yet Puyallup initiated most, if not nearly all of the activity.²

Puyallup bemoans of "repeated and recycled arguments", yet it was Puyallup that filed repeated and recycled pleadings: two Dismissal motions based on RCW 64.40, two Dismissal Motions based on CR 19: one before this Appeals Court (which was denied)³ and then Puyallup filed exactly the same CR 19 Motion at the trial

¹ "This litigation needs to end. This lawsuit is over nine years old, has a tortured procedural history, and has been litigated to death....Thereafter, this case has generated over 80 pleadings, briefs, memoranda and declarations totaling more than 7,500 pages, and prompted least 14 in-Court hearings or motions wherein Plaintiffs asserted, and re-asserted, the same arguments. In this appeal, Appellants have filed five notices of appeal challenging eight orders and three judgments, making innumerable motion and brief extension requests, and dragging this appeal out for over three years." Puyallup Brief at 1.

² See copy of Docket / Clerks Papers attached to subjoined Declaration of Counsel as **Exhibit A**.

³ See Appeals Court *Order on Remand on* file in Div. II Cause No. 45476-9-II, CP 3050-51.³

court, which was granted, followed by Puyallup moving to vacate the resulting Order, and then Puyallup moving to reinstate the previously vacated Order on attorney fees. One needs a written roadmap to keep up with Puyallup's duplicative and shifting procedural actions.⁴

As an example of Puyallup's repeated technique of providing this Court with only "selective" "facts" in its campaign to tar and feather Appellants and their legal counsel, on the very first page of its Response Brief ("*Response*"), Puyallup inserts the following half-truth passage:

These same Appellants filed a previous, nearly identical lawsuit in 2006, making many of the same arguments and claims - but without the ch. 64.40 damage claim. Appellants were sanctioned in that case, too, by the Court of Appeals. *See, Spice v. Pierce County*, 149 Wn. App. 461,204 P.3d 254 (2009).

Puyallup's statement to this Court is wholly inaccurate/misleading due to Puyallup's glaring omissions:

- First, the issues in the LUPA I Appeals Court case were nothing alike those here. In LUPA I, the issue on appeal was whether the Superior Court had jurisdiction after Petitioners filed a CR 41 voluntary dismissal, as opposed to the LUPA, tort, RCW 64.40, CR 11 and declaratory judgement issues on appeal here.⁵

⁴Every action by Puyallup required of course a response by Petitioners.

⁵ "Ted Spice and Plexus Development, LLC (Spice and Plexus) appeal the superior court's denial of their CR 60(b)(5) and motion to vacate the superior court's dismissal of their LUPA1 petition, challenging the Pierce County Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision, concerning their water service dispute with Pierce County and the City of Puyallup. Spice and

- Second, Puyallup is aware that (1) **the Supreme Court granted Petitioners' Petition for Review of that Decision** and (2) **Petitioners were never required to pay those attorney fees and costs**, because Puyallup and Pierce County agreed to **not** pursue fees as part of Petitioners' agreement to withdraw their Petition for Review, after Petitioners' Petition for Review was granted⁶.

See subjoined *Declaration of Legal Counsel*, and attached **Exhibits B** (signed Settlement) and **Exhibit C** (Supreme Court Order in No. 83151-3), accepting Petition for Review, for which the Court may take judicial notice⁷.

Plexus argue that (1) the superior court lacked jurisdiction to enter an order of involuntary dismissal after they had already voluntarily dismissed their LUPA appeal under CR 41(a); (2) the superior court's dismissal order with prejudice was void because CR 41(b) limits its authority to dismissal without prejudice; (3) thus, the superior court erred in denying their motion to vacate this "void" dismissal order; (4) the superior court erred in denying their motion to vacate the dismissal order as untimely because they brought the motion within a reasonable time; and (5) the superior court erred in denying their motion to vacate because it had prematurely entered the involuntary dismissal order after only ten months, contrary to CR 41(b)'s requirement of a one-year lapse before the trial court can enter such an order." See *Spice v. Pierce County*, 149 Wn. App. 461, 204 P.3d 254 (2009).

⁶*Id.* In the LUPA I, Petitioners contended the superior court lacked jurisdiction, while Puyallup argued the Court retained jurisdiction and could transform a voluntary CR 41 to a dismissal with Prejudice. The Appeals Court agreed with Petitioners that the Court lacked jurisdiction after the CR 41 dismissal was filed, but strangely awarded attorney fees and costs against Petitioners. *Id.*

⁷ Puyallup further blatantly mis-describes these same facts later in its Response at page 6, completely omitting (1) that Appellants' Petition for Review was **granted** by the Supreme Court, and (2) that Puyallup and Pierce County **dropped** the fee and cost award as a condition of the Stipulated Order, **both pretty significant facts**: "Appellants appealed and Division II of the Court of Appeals upheld the dismissal, held that the appeal was frivolous, and imposed sanctions.4 *Id.* at 468. Appellants thereafter sought discretionary review to the State Supreme Court, and on a Stipulated Motion to Dismiss Review the Supreme Court on June 30, 2010 dismissed the review. CP 1722, Section 17.

Puyallup also misleads the Court at *Response* at 2, when it represents that, “Ms. Mathews is specifically identified in the Complaint as “the [100%] fee title property owner.” CP 2. This is incorrect.

- First, the action was initiated by a LUPA Petition (and Complaint).
- Second, in fact, the LUPA Petition identifies **all Petitioners** as property owners.⁸ There is no “100%” ownership by Ms. Mathews stated in the Petition, as Puyallup claims⁹.
- Further, the LUPA Petition describes that the appeal is “for review of the Pierce County Deputy Hearing Examiner’s August 7, 2007 Decision in the Resolution of a Water Service Dispute involving Ted Spice and Plexus Development, LLC and the City of Puyallup.

Next, Puyallup’s claimed “Two key points” (*Response* at 2) are equally misleading. Puyallup claims, incorrectly here and throughout, that first:

- “nor has Plaintiffs'/Appellants' attorney Lake ever informed either the trial court or this court, that she no longer represents Ms. Mathews (or her estate)” and

⁸ Ms. Mathews’ status as fee owner was described to satisfy RCW 70C. 040(c) which calls for service upon each person identified by name and address as the taxpayer for the property at issue in the records of the county assessor based on the description of the property in the application, if no person is expressly identified un the underlying written decision as the land owner. Being named as the fee owner in the tax assessor rolls does not negate the other demonstrated property interests help by Spice and Plexus.

⁹ Puyallup at page 2 *Response*: “Ms. Mathews is specifically identified in the Complaint as “the [100%] fee title property owner. CP 2”.

- “Second, ...following a hotly contested trial between Ted Spice and Mathews' Estate in 2012 which involved the subject property, the Pierce County Superior Court awarded 75% ownership of the Property to Ms. Mathews' Estate and 25% ownership to Spice. CP 3668, 3671. Attorney Lake has never amended the complaint to reflect this post-filing ownership adjustment, but she continues to represent Ms. Mathew's interests”.

All are untrue or misleading statements:

- First, Puyallup neglects to mention that Appellants' Counsel informed the Court and Puyallup that Ms Mathew was deceased immediately after the first adverse ruling entered that had a potential monetarily- adverse effect in their Notice of Appeal CP 4797 dated October 1, 2013. This was filed with the Trial Court and served on Puyallup two months before the Order awarding fees was filed. December 13, 2013. CP 2591-2592.
- Puyallup repeats this omission at *Response* at 10 when describing those Appellants filed their appeal on October 10, 2013 but completely neglecting to also describe that Appellants noted the passing of Ms Mathews in that pleading.
- Further Puyallup is blatantly incorrect when describes at *Response* at 12, that, “Between December 9, 2009 (the day after Ms Mathews died) and December 13, 2013....During this time and activity, attorney Lake never advised the City's attorneys or the Trial Court that Ms. Mathews ... had died”. It is not until *Response* at 13 that **Puyallup attorneys admit that they failed to notice the statement of Ms**

Mathews' death until "weeks later". Puyallup attorneys offer no explanation for their own conceded "oversight."¹⁰

- And, Puyallup cannot have it both ways - Puyallup also cites *Campbell v. Campbell*, 878 P.2d 1037 (Okla.) (1994) to this Appeals Court, in support of sanctions on Appellants' Counsel at *Puyallup Response* at 61, 84. The *Campbell* Court interestingly stated that under a similar Civil Rule 25, **a decedent's attorney has no authority either to move for substitution or even to suggest the death of his client upon the record.** "Such action could clearly prejudice the rights of a successor party to whom that attorney bears no legal relationship." *Id.*
- Puyallup's reliance on the *Campbell* case does not stop it from inconsistently also asserting: "Counsel for Appellants allowed this Order and Judgment to be entered against their client, Doris Mathews, even though she had been dead for four years." *Response* at 10, and 12: "Nor did they ever move the trial court to substitute the Estate of Doris E. Mathews".¹¹
- In fact, each Notice of Appeal filed by Appellants beginning on October 10, 2013 make it clear on page one that Appellant's counsel represented only two parties: Ted Spice and Plexus:

‘Pursuant to RAP 5.3, the Appellants state as follows:

The Parties seeking review are specified: Appellants Ted

¹⁰ Likewise, Puyallup is also factually wrong its footnotes No. 6 and 7 on *Response* at 12.

¹¹ This error is repeated in the Trial Court's Order on CR 11 several times, such as FF #28, at *Response* page 17 (CP 3418-3419).

Spice and Plexus Development, LLC.’¹²

- Second, Appellants legal counsel never amended the Petition to reflect any post-filing ownership adjustment, because although percentage of ownership changed during the litigation, *it was always true* that one or both surviving Appellants owned “any interest or right in real property,” which by express RCW 64.40.010(3) definition, is all that is required to maintain that cause of action.¹³

It also is of no adverse significance to Appellants’ case, as Puyallup argues at *Response* page 4, that the Pierce County Water Dispute Resolution Process is no longer in effect. It is enough that Puyallup admits, as it does, that Puyallup has only recently corrected their previously flawed water service process¹⁴. What matters is that Puyallup’s flawed process was in effect from 2004 through 2011, at the relevant time when Appellants were seeking to improve their property from residential to the more valuable commercial warehouse.

¹² CP 1369-1381 at 1370, and 2nd Notice of appeal, CP 2593- 2613, and thereafter. 3560-3561, and CP 5453-5496.

¹³ RCW 64.40.010(3) "Property interest" means any interest or right in real property in the state.

¹⁴ *Response* at 4: “When Appellants filed their 2006 and 2007 (current) LUPA Petitions, in addition to the aforementioned requirements, the City required owners of property outside the City limits, to annex their property into the City as a pre-condition of approval of a water service connection or change of water service.³ This annexation requirement, which forms the basis for both of Appellants’ LUPA lawsuits (see discussion, below), and which underlies their ch. 64.40 damage claim, was in effect from June, 2004 until July 18, 2011. This requirement was eliminated by the City Council in 2011. ...”

The actions of Puyallup in failing to act on Appellants' application for additional water service caused damage to Appellants within the meaning of RCW 64.40.030(4). CP 991-1002. These damages were incurred between the time Appellants' were first denied a Water Availability Letter in 2004 and were ongoing.¹⁵ Any current, professed willingness by Puyallup to accept water service NOW, without annexation does not make Appellants whole for the past damages. This relief comes too late, and does not exonerate Puyallup from its wrongful past actions. Petitioner's damages are supported by industry experts and are expected to exceed \$3,500,000. CP 988-990 and 991-1002.

Puyallup's next "Counterstatement of Facts" in need of refuting is Puyallup's repeated contention that (1) Appellants were required to follow Puyallup's water service process, and (2) they failed to do so. *Response* at 3 and 4. In truth:

- This Appeals Court has definitively found under near identical facts that at the time relevant to Appellants' claim, the Pierce County process, and not Puyallup's, applied to address this type of water service dispute, "The final action under the PCC for resolution of water service disputes is a decision by the Pierce County Hearing Examiner. PCC

¹⁵ CP 120, 122-124, 129, 130-131, 281, 627-8, 1108. CP 991-1002, 4762-4773.

19D.140.090(F)(2).” *Stanzel v. City of Puyallup* 150 Wash.App. 835, 209 P.3d 534, Wash. App. Div. 2 (2009).¹⁶

- And, in an administrative Finding of Fact un-appealed by Puyallup and thus a verity, the Pierce County Hearing Examiner already found as a matter of law that Appellants tried to file an application, but Puyallup frustrated that filing and refused to process. CP 120, 122, 627-8, 1108.

It is also incorrect as Puyallup claims that Appellants sought “an unconditioned water service availability letter. (*Response* at 4-5, where Puyallup underlines “unconditioned” four times.) This characterization is new, undefined (implying Appellants were resisting all conditions such as fees, etc) and is wholly unsupported by the record¹⁷. In truth Appellants merely sought water service without a requirement to also annex to Puyallup, just as *Stanzel* had. CP 120-124.CP 988-990. See also CP 1108.¹⁸

¹⁶ Puyallup signed, was a participant to and has received the benefits of a state-mandated and County administered “Pierce County Coordinated Water System Plan.” (“CWSP” or “Water Plan”). CP 108, 122. At times relevant to the LUPA appeal, The Regional Water Plan is implemented by provisions of Pierce County Code Ch. 19D. 140, which provisions include a dispute resolution process at §19D.140.090. CP 97 and 619-20.

¹⁷ Puyallup falsely claims that “Appellants’ argument was, and continues to be, that the Hearing Examiner could require the City to provide water service to their land without conditions or having to annex their property to the City (even though the City Code at that time clearly required annexation).” *Response* at 4.

¹⁸ On August 14, 2004, the applicant received an email message from Collen Harris further explaining the City’s process regarding water service to unincorporated Pierce County which stated in part, the following, “As we indicated in the pre-app, the City of Puyallup cannot issue you a water

Next Puyallup selectively quotes in *Response* at 7 from the 2007 HE Decision, leaving out the HE's critical Conclusion of Law #3, at CP 102, presumably because that omitted language is harmful to Puyallup:

If a court determines that the Hearing Examiner does have authority to order this type of relief, then in this particular case, the Hearing Examiner would order the City of Puyallup to provide the service given these specific facts.

Puyallup also curiously characterizes the Court's 2008 Order on LUPA 2 as "substantially favorable to the County and City." *Response* at 8. In fact, the Superior Court found that the HE was empowered to consider whether Puyallup's requirement that Appellants to annex to Puyallup was a reasonable condition precedent to Appellants receiving water. CP 666-669. See also Transcript Excerpt – CP 1315-1324, copy attached. This was a victory for *Appellants*, since if the condition was found unreasonable, then under the rules in place at that time, the HE could then strike the requirement, and Appellants would receive the water service.

Next, it is simply not true as Puyallup asserts that, "nothing

availability letter until your property is in the process of being annexed. At this time we have not received enough signatures from properties with your area to proceed with annexation. Therefore the City is unable to issue you a water availability letter at this time." This is the heart of Appellants' water service denial issue.

happened for five years” *Response* at 9, and Puyallup knows it. In fact, Appellants were familiar with and followed closely the cases of *Stanzel v. Pierce County*, 07-2-11228-1 and also in *Pierce County v. Stanzel*, 08-2158093, where the Trial Court ruled the Pierce County Hearing Examiner does have the authority to decide on whether annexation is a reasonable condition precedent to water service. CP 988-990. The Trial Court had ruled that Puyallup’s provision of water service cannot reasonably be tied to annexation. See pages of certified Admin Record on file in *Pierce County v. Stanzel*, 08-2158093, and Court Order, CP 1339-1353, copy attached.

Appellants’ present facts in this case are identical to the facts in the *Stanzel v. Pierce County* matter(s) as both Stanzel and surviving Appellants were residential water service customers of Puyallup and sought merely to change to commercial water service from Puyallup, but were denied the ability even to complete the Puyallup application process. At one point both Stanzel and Plexus both were the subjects of a combined hearing before the Pierce County Hearing Examiner. Appellants followed the *Stanzel* cases closely, noting that it involved two Superior Court litigation matters and at least three trips to the Court of Appeals. Appellants in this case sought not to duplicate those redundant and litigious actions. Upon

conclusion of the *Stanzel* case, Appellants sought resolution with Puyallup, and were met with various milestones from Puyallup, including **a request by Puyallup's own attorney in 2011 that Appellants "refrain from re-initiating Court proceedings"**. CP 1357, copy attached. These factors explain the perceived lack of action in the Court file. CP 988-990.

On page 10 *Response*, Puyallup begins its characterization of the Stipulated Order between Pierce County and Appellants as declaring the LUPA claims to be "fully adjudicated". Later and throughout its *Response*, Puyallup argues (incorrectly) that this Order somehow estops Appellants from appealing the Trial Court's 2008 Order. But this Appeals Court has already ruled on a similar Motion brought by Pierce County, denying that theory:

The motion to dismiss Pierce County as a respondent is denied. The stipulation between Spice and Pierce County dismissed the "remaining and bifurcated claim for damages." **It did not dismiss Spice's LUPA claims, which were apparently adjudicated in the 2008 order.** As to the LUPA claims, Pierce County does not show that it should be dismissed as a respondent. The motion for sanctions is denied.

See *December 17, 2013 Letter Ruling* by Commissioner Schmidt, on file herein and copy attached as **Exhibit D** to subjoined Declaration of Counsel.

These are but a handful of Puyallup counsel's legal and factual sleight of hand, appearing on Puyallup's *Response*, pages 1-13 (out

of 100 pages). These examples should motivate this Court to scrupulously review for accuracy each case and record cited by Puyallup.¹⁹

II. ANALYSIS IN SUPPORT OF GRANTING APPEAL.

A. Trial Court's Findings are Not Verities As Puyallup Wrongly Claims.

Appellants in their Opening Brief assigned error in detail and precisely stated all the Findings of Fact and Conclusions of Law with which they disagreed. Puyallup's argument that Appellants failed to sufficiently challenging findings pursuant to procedural rule RAP 10.3 is baseless. An issue is adequately preserved if that issue is called out in briefing with reasonable clarity. *Wolf v. Columbia Sch. Dist. No. 400*, 86 Wash. App. 772, 776, 938 P.2d 357, 359 (Div. 3, 1997) (Issue considered because "This court will address the assignment of error because the issue is well framed by the record and briefing."); citing *Lewis v. Estate of Lewis*, 45 Wash. App. 387, 389, 725 P.2d 644, 646 (Div. 1, 1986) (Review of finding of fact allowed if briefing "clearly indicates that she is challenging the finding" despite not expressly challenging finding pursuant to

¹⁹ As Counsel of Attorney Hansen below noted, "Puyallup's briefing style has been to make mountains of conclusory statements, many about points of law as if they were facts and to include simplistic statements about what cases hold without exploring the case, implicitly suggesting they informed the issue in this case... **Counsel has too little space to regurgitate all the true facts or meet each of the shotgun statements in Puyallup's many and extensive filings.**" CP 4890-4905 at 4891 (page 2).

procedural rule RAP 10.3.); *State v. Olson*, 126 Wash.2d 315, 323, 893 P.2d 629 (1995) (Whether or not a party sets forth assignments of error for each issue on appeal, this court will reach the merits if the issues are reasonably clear from the brief, the opposing party has not been prejudiced and this court has not been overly inconvenienced).

Puyallup concedes that Appellants assigned error to 77 findings of fact in their 100 Opening Brief. *Response* at 20. Puyallup objected to the length of the Brief (which this Court allowed), but still Puyallup argues that Appellants should be required to “type the material portions of the text out verbatim or include them by copy in the text or in an appendix to the brief” as required by RAP 10.4(c).” Strict compliance with RAP 10.4(c) in this case would surely “overly inconvenience” the Court. A copy of each Order on appeal was attached to each corresponding Appeal. This Court should decline Puyallup’s invitation to sidestep the merits of this appeal by this hyper-technical and flawed procedural maneuver.

B. Appellants’ Appeal of 2008 Trial Court Order Remains Viable & Should be Granted.

1. Appeal of 2008 Order is not Time Barred.

Puyallup somehow fails to grasp that Appellants are appealing the Trial Court’s 2008 Order, which included remand. Puyallup

accurately describes the issues Appellants raise in this section of the brief,²⁰ but then curiously argues that (1) Appellants' appeal fails because "they never sought remand"²¹ and that (2) Appellants are now somehow time barred from appealing the 2008 Order.²² Appellants struggle to follow Puyallup's claim. Puyallup apparently fails to understand that Appellants are not required to act on the Trial Court's Order as a condition of bringing this appeal.

Puyallup's arguments on this point also fail, as they cite no authority in support. When a brief lacks citation to legal authority, cogent argument, or references to the record, or includes mere conclusory argument, in violation of RAP 10.3(a)(6), the issue does not merit this Court's consideration. *Brownfield v. City of Yakima*,

²⁰ *Response* at 23: "Appellants make the following arguments: 1) that Puyallup breached its duty to provide water service; 2) that the Hearing Examiner determined Puyallup breached its duty to provide water service; 3) that Puyallup may not contest findings or conclusions from the Hearing Examiner rulings which they did not appeal; 4) that the State has pre-empted water service laws and Puyallup may not unilaterally amend State law; 5) that the Hearing Examiner had authority to require the City to provide water to the Appellants' property; and 6) that the trial court erred in dismissing Appellants' alternative claim of declaratory relief."

²¹ *Response* at 23.

²² *Response* at 24: "Further, Appellants never sought modification or reconsideration of the Order, and never sought interlocutory review of it. **The time period for seeking any other relief from the Hearing Examiner or requesting further review by this Court of the underlying water service or water condition issues asserted by Appellants expired many years ago and can no longer be asserted.**" And at 24-5, "And, the Examiner's August 7, 2007 decision, of the City and County, is final, binding and the law of the case. The bifurcated LUPA and declaratory claims are, therefore, time barred, unassailable and were properly be dismissed."

178 Wn. App. 850, 876, 316 P.3d 520 (2013).

And, while the water application process may have been revised in the intervening years, **all of Appellants claims are unaffected. It remains viable for the Court to determine each of the 2008 issues on appeal, especially the issue of Puyallup's duty and breach, during the relevant time frame, 2004-2011:**

- 1) Puyallup breached its duty to provide water service;
- 2) The Hearing Examiner determined Puyallup breached its duty to provide water service;
- 3) Puyallup may not contest findings or conclusions from the Hearing Examiner rulings which they did not appeal;
- 4) The State has pre-empted water service laws and Puyallup may not unilaterally amend State law;
- 5) The Hearing Examiner had authority to require the City to provide water to the Appellants' property; and
- 6) The trial court erred in dismissing Appellants' alternative claim of declaratory relief.

And these issues are easy for this Court to reach, under the guidance provided in *Stanzel*.

2. Puyallup Cannot Now Contest the HE's Findings of Fact.

If anything is time barred and "unassailable", it is Puyallup's attempt to now challenge the HE's 2006 Findings of Fact, Conclusions of Law and Decision, which Puyallup failed to appeal. Puyallup's *Response* at Section B(3) (and repeated elsewhere) consists entirely of Puyallup disavowing that Appellants submitted

or tried to submit a water service application to Puyallup²³.

Puyallup is wrong.

The Pierce County HE issued Findings of Fact on Puyallup's denial of water service, which Puyallup did not appeal. These facts are verities:

5. It is **undisputed** that the city of **Puyallup is the exclusive water provider** for this particular parcel.

3. ...Clearly **timely water service is not being provided by the City of Puyallup given that they have not to this day agreed to provide water service.**

(Decision) **"Puyallup is unwilling to provide timely and reasonable water service to the Applicant's parcel."**

CP 122 & 124 and see *CP 130-131*. The HE also found that

Puyallup is bound by these prior rulings. In his August 7, 2007

Decision, the HE correctly ruled that:

No appeals were filed, therefore, this Decision on Reconsideration remains in full force and effect. *CP 101 (FF# 3)*.

The previous decision is the "law" for this case. The City of Puyallup had ample opportunity to argue their position at the previous hearing, yet failed to even appear at that hearing. *CP 102, Conc. of Law#4*.

The HE's ruling is consistent with black letter law. These

²³ Response at 27: "Appellants have never submitted an application for water service that satisfied the requirements of Puyallup's (water service) Code. *CP 1518-1519, CP 1723-1724*. They have never submitted a written application for water service or a change in water service; nor have they had or requested a pre-application meeting with the City, paid any application fee, asked for City staff review of any proposed application, requested a City Council hearing or review of any proposed application or submitted plans for water service or change of water service."

rulings were also NOT appealed by City and remain verities today. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wash.2d 169,175,4 P.3d 123 (2000).

The **record here is directly contrary** to Puyallup's claims, including but not limited to, that Appellants did not "requested a pre-application meeting with the City, paid any application fee, asked for City staff review of any proposed application."²⁴ See CP 641-642. Appellants spent nearly a year of jumping through Puyallup's hoops to obtain water service. After Plexus attended Puyallup's pre-application meeting on August 3, 2004, as required by Puyallup code to be the first step in obtaining water service for areas outside City limits, Appellants were turned down flatly by Puyallup. CR 124, 129, 641-2. CP 120, 281.²⁵ Appellants expressly were told that because the site wasn't annexed to Puyallup, "Therefore, the City is unable to issue you a water availability letter at this time." CP 642.

²⁴ *Response* at 27.

²⁵ Puyallup staff issued Plexus its list of conditions which Puyallup would require prior to allowing water service to Plexus. CP 627-8. However, Puyallup also advised Plexus that it would not act on Petitioners' application/allow Plexus access to water service unless or until annexation of the Plexus property was entirely under way. CP 120, 122, 627-628, 1108. Per City official Colleen Harris, the City determined that, "...the City of Puyallup cannot issue you a water availability letter until your property is in the process of being annexed. At this time, we have not received enough signatures from properties within your area to proceed ahead with annexations. Therefore, the City is unable to issue you a water availability letter at this time." CP 120, 641-642, Copy attached

3. Willingness to Provide Water Service Come too Late & Does Not Cure Past Damages.

Puyallup's professed willingness to **now** provide water²⁶ does not remedy their refusal to do so in 2004 through 2011, does not make Appellants whole, and does not make up for the resulting damages to Appellant during that time. CP 988-990, and CP 991-1002.

4. Regional Water System Agreement Has a Direct and Substantial Bearing, as It Establishes Puyallup's Duty to provide Water Within its Water Service Area, Which includes Appellants.

Contrary to Puyallup's claims, the Regional Water System Agreement described in Appellants' Opening Brief (pp 28-39) has a direct and substantial bearing²⁷, as it establishes Puyallup's duty to provide water within its water service area, which includes Appellants. This is the duty that Puyallup breached.

The Public Water System Coordination Act (RCW 70.116) provides the legal mechanism to establish exclusive water utility service areas within areas designated as "critical water supply service areas". CP 119. Pursuant to the "Municipal Water Law" (43.20 RCW), **Puyallup is required to provide water service** to all new retail customers within its retail services areas:

²⁶ *Response* at 27-28.

²⁷ *Response* at 30.

“The establishment of the exclusive service area carries with it two obligations. The first obligation is that the County and state agencies recognize **the identified purveyor as the responsible agency for providing all public water service within the designated area.** After service areas are designated, **it is then the obligation of the designated purveyor to accept the responsibility for development of cost effective and efficient service to accommodate the future growth that the area will experience and to do so in a timely and reasonable manner.**

2004 Lead Agency (Pierce County) Dispute Resolution Report for Plexus/Spice at CP 635.

Puyallup signed and during relevant times was bound by Pierce County’s “Standard Service Agreement Establishing Water Service Utility Service Area Boundaries” (CWSA). CP 647-652. As a result, Puyallup agreed that, it “having entered into this Agreement by its signature, concur with and will abide by the following provisions” which include:

Municipalities further agree that **if they identify a service area outside of their existing municipal corporate boundaries, the municipality will assume full responsibility for providing water service equivalent to the level of service provided for their customers inside the city limits** with similar service requirement, and must also meet or exceed Pierce County’s minimum design standards.

CP 651.CWSA at Section 8. “A Municipal water supplier, as defined in RCW 90.03.015, has a duty to provide retail water service within its retail water service area”. CP 120.

The CWSP at relevant times was implemented by provisions of

Pierce County Code (PCC) Ch. 19D. 140, which included a process to resolve disputes between customers such as Appellants and the local water purveyor, here Puyallup at PCC §19D.140.090. CP 97, 122, CP 619-20. At relevant times, PCC Section 19D.140.090(F)(2) specifically called for referral of disputes to the “Pierce County Hearing Examiner for final resolution” under the PC Water Plan. (Emphasis supplied.) CP 122-3. 619-20.

The CWSP defines timely services as “receiving a commitment to provide service, or the reaching of an agreement with the potential customer, within 120 days of request of water service. The 120-day time period shall be defined as calendar days.” CP 124 and 586-661 at 639.

5. Undisputed Facts & Verities Establish Puyallup Breached Its Duty To Provide Appellants Water Service.

It is undisputed that Puyallup did not appeal any of the HE Decisions in this matter.²⁸ The undisputed and un-appealed facts established that the Subject Property is within Puyallup’s retail service area, as established by Puyallup’s CWSP. Puyallup had a duty to serve Plexus/Spice pursuant to the CWSP and RCW 43.260. Thus, Puyallup breached its duties as exclusive water service

²⁸ CP 122-124, CP 129-131, CP 101-2.

provider pursuant to RCW 70.116, the Pierce County Water Plan, Puyallup's CWSP, RCW 43.20, and Puyallup's DOH approved water system plan. Based on the undisputed facts and the state water law, the Superior Court erred in not granting Appellants' LUPA appeal, which included the tort claim that Puyallup breached its duty to provide water to Petitioners. CP 341-366. The following Summary was provided to the Trial Court²⁹, and may also be helpful on appeal:

Timeline/ Summary of Facts.

- 1977 -** **Washington State enacts a “Public Water System Coordination Act”³⁰**
- Required Counties to stake out defined Water Service Areas within each County
 - Intent to stop overlap of service district for critical services (water)
 - Service Providers given exclusive service areas in exchange for agreeing to provide service
 - Counties given oversight of Plan
 - County given authority for Water Service Dispute Resolution for disputes between Providers (Puyallup) and Customers (Spice/Plexus).
 - Pierce County Coordinated Water System Plan defines “timely service” as a Customer receiving a commitment from Provider to provide service within 120 days of the request
- 1994-** **Puyallup signs Service Agreement establishing Puyallup's Water Service Area³¹**

²⁹ CP 1245 – 1301.

³⁰ CP 1254-1256. **Attachment 1** – Pierce County Water Staff Letter to Pierce County HE, explaining history.

³¹ CP 12571262 **Attachment 2** – Puyallup signed Water Service Area Agreement.

1994-96- Pierce County adopts/amends Water Dispute Resolution Process³²

June- August

- 2004- Spice/Plexus tried to apply for water service from Puyallup;**
- Puyallup refuses.³³
 - More than 120 days pass
 - Spice applies to County Staff per County Water Plan Dispute Resolution Process

12/2004 – Pierce County Staff refers Dispute to Pierce County Hearing Examiner per County Water Plan Resolution Process

May 2005 - Hearing Examiner Ruling – In Favor of Spice, releasing him from Puyallup Water Service Area³⁴

5. It is undisputed that the city of Puyallup is the exclusive water provider for this particular parcel.

3. ...Clearly timely water service is not being provided by the City of Puyallup given that they have not to this day agreed to provide water service.

(Decision) “Puyallup is unwilling to provide timely and reasonable water service to the Applicant’s parcel. Therefore, the applicant’s parcel is hereby removed from the City of Puyallup’s water Service Area. The applicant has already agreed to sign a no protest annexation agreement. Clearly the applicant does not have any control over the

³² CP 1263-1267. **Attachment 3** - Pierce County Code Ch. 19D. 140, which provisions included the Regional Water Plan dispute resolution process

³³ CP 1268-1280. **Attachment 4-** Pierce County Lead Agency Dispute Resolution Report at page 9 CP 1278:

- 8/3/2004 Puyallup Public Works Director Colleen Harris Memo to File; Puyallup refusal to provide water

-8/16/2004- Puyallup Public Works Director Colleen Email to Spice Denying water Service -

³⁴ CP 1281-1288, **Attachment 5** - 19 May 2005 Pierce County Examiner’s Ruling: *Examiner’s Finding 5*, Conclusions 3 and Decision.

other property owners. **The applicant is allowed to seek other water service options.**"³⁵

January 2006 –Pierce County Hearing Examiner issues Decision on Reconsideration, in favor of Spice CP 1289-1294.:

1. **Pierce County** asks the HE to broaden the relief given to Spice to also apply to other spurned, Puyallup customers. **The HE agrees:**

The County has requested the Examiner make a ruling that other applicants experiencing the same situation as the present applicant be allowed to pursue alternate options for water service...It is

³⁵ CP 1281-1288 **Attachment 5**, 19 May 2005 Pierce County Examiner's Ruling at **page 3** -The County Utility Staff charged with administering the Regional Water Plan Dispute Resolution Process supported Petitioners' efforts, as the following Hearing Examiner Decision summary of testimony attests:

Appearing was SUSAN CLARK who presented the Public Works and Utilities Staff Report. She submitted previous water dispute decisions and attached them to the staff report. **She provided the background for this dispute. The Public Water System Coordination Act requires water systems to establish service areas.** The City of Puyallup is the designated service area for this particular parcel. The applicant is required to obtain water service from the City of Puyallup. **They are the exclusive provider. They City of Puyallup is required to offer timely and reasonable service to the applicant. The site is currently used in a residential capacity, but it is zoned for commercial use in the Employment Center zone classification. The applicant intends to redevelop the property and wants the City of Puyallup to continue to provide water to the site. The applicant requested water service from the City of Puyallup. On or about June, 2004, the applicant attended a pre-application meeting. He was eventually told in August that the City could not issue a water availability letter until his property was in the process of being annexed. There have not been enough signatures from property owners within the immediate area to proceed with annexation, thus the City would not issue a water service availability letter. The Pierce County Coordinated Water System Plan defines "timely service" as receiving a commitment to provide service within 120 days of the request. Clearly more than 120 days have passed. The City of Puyallup has elected not to provider water. The applicant has requested approval to provide water by well. Staff recommends that the applicant be allowed to pursue other options for water service. Planning Staff is also asking that the Examiner rule that other applicants in the same position be allowed to pursue other options.**

CP 1283, Emphasis added.

undisputed that Puyallup is not providing timely and reasonable water service to parcels located within their water area, but are outside city limits and are not currently under annexation. No City representative even showed up for the hearing. Time and money will be wasted if other properties not similarly situated as this parcel not be granted the same rights as this parcel. It is clear that Puyallup will not provide service and other similarly situated parcels would be entitled to the same relief as the applicant.³⁶

2. **Spice** asks for permission to pursue additional sources of water and to come back to the HE if no other means of providing water is available. **The HE agrees:**

The applicant is allowed to pursue his plans to develop a Group A well water system as an alternative to obtaining service from the City of Puyallup. In addition, the applicant may request to receive water service from any other available water source. If either the Group A well water or any other water source is not available to applicant, then the applicant may request from the [Pierce County] Hearing Examiner that the city of Puyallup be required to provide water to the site...³⁷

August 7, 2007 – Hearing Examiner Decision – CP 1295- 1301.

Spice has been unable to obtain water service elsewhere and returns to HE for relief, per the above ruling on reconsideration.

The Pierce County Hearing Examiner rules he lacks authority to require Puyallup to provide water service, however the HE states:

“If a court determines that the Hearing Examiner does have this right to impose this condition, given the facts and circumstances of this case and the previous decision of the HE, the Hearing Examiner

³⁶ CP 1289-1294 Attachment 6 – 12 January 2006 PC HE Ruling at page 3-4.

³⁷ CP 1289-1294 Attachment 6 – 12 January 2006 PC HE Ruling at page 3-4.

would require the City of Puyallup to provide this service. The applicant has shown he has no other reasonable alternatives for water.”³⁸

August 28, 2007 – Spice timely files LUPA Petition with Superior Court to seek clarification of the HE’s authority, which also includes RCW 64.40, tort and constitutional claims against Puyallup³⁹

October 8, 2008 – Pierce County Court declines to grant Puyallup’s RCW 64.40 Summary Judgment Motion, remands the LUPA Issue, and bifurcates and sets the damages portion of the case for Trial.

2009 - Court of Appeals publishes Opinion: *Stanzel v. Puyallup, Stanzel v. City of Puyallup* 150 Wash. App. 835, 209 P.3d 534, Wash. App. Div. 2, 2009.

1. The Appeals Court found that that Pierce County HE and **not** City HE process was the correct forum for water customers to pursue service disputes:

We agree that the PCC provides a forum for Stanzel to dispute the City's failure to provide him with a water availability letter as a reasonable service dispute.

Stanzel, 848.

2. The Appeals Court found that that Pierce County Hearing Examiner has authority to require Puyallup to provide water ***under exactly the facts as here.***

“The distinction that the hearing examiner drew in this case was that Stanzel was already an existing water customer and the City was already providing him with residential water service... The hearing

³⁸ A CP 1295- 1301 Attachment 7 – 7 August 200 PC HE Ruling at page 6-7.

³⁹ See Spice / Plexus *LUPA Petition* on file. CP 1-6.

examiner noted that the City agreed in 1994 to provide water service to an area including this particular property. The hearing examiner noted that the City had correctly argued that a municipality cannot be compelled to provide water outside its corporate limits, *but distinguished this case on the fact that the City was already providing him water.*

**

3. Accordingly, we hold that **the hearing examiner, in this fact pattern, had authority to place a reasonable condition on the City such that it would not require Stanzel to sign a pre-annexation agreement to use City water** because Stanzel was unable to seek service elsewhere, either by private well or secondary water provider.”

Stanzel at 840.

2004- 2013 Exactly as in *Stanzel*, Spice/Plexus was an existing water customer, and has been throughout all relevant times.⁴⁰ Spice/Plexus was unlawfully denied water service by Puyallup- since 2004.

6. Puyallup’s Cited Case Do Not Support Puyallup’s Attempt to Disavow Its Breach of Duty

None of the cases cited by Puyallup support its attempt to disavow its breach of its duty to provide Appellants with water service. The cases simply don’t stand for what Puyallup claims.

Puyallup cites to *Brookens v. City of Yakima*, 15 Wn. App. 464,

⁴⁰ CP 1281-1288 **Attachment 5**, 19 May 2005 Pierce County Examiner’s Ruling **at page 3**: “The City of Puyallup is the designated service area for this particular parcel. The applicant is required to obtain water service from the City of Puyallup. **They are the exclusive provider. They City of Puyallup is required to offer timely and reasonable service to the applicant. The site is currently used in a residential capacity, but it is zoned for commercial use in the Employment Center zone classification. The applicant intends to redevelop the property and wants the City of Puyallup to continue to provide water to the site”.**

465-66, 550 P.2d 30 (1976); *Harberd v. City of Kettle Falls*, 120 Wn.App. 498, 515-16, 84 P.3d 1241 (2004) to purportedly to support “as a general rule, a municipality does not have a duty to provide water or sewer service outside its corporate limits.” *Response* at 31. But *Brooken* actually supports Appellant, as it actually states “**In the absence of contract, express or implied, a municipality cannot be compelled to supply water outside its corporate limits**”. And, “**A contract to supply water may also be found by implication, as where a municipality holds itself out as a public utility willing to supply all those who request service in a general area**”. *Id* at 32.

The *Harberd* Court at 515, also cited by Puyallup, also recognizes that the duty does exist where a municipality is the exclusive service provider, exactly as Puyallup is here, during relevant times:

Similarly, **a municipality may be under a general duty to provide water and sewer services where it is the exclusive supplier of sewer or water service in a region extending beyond the borders of the city**. But that duty is not absolute; the municipality may properly deny water or sewer services if it lacks the needed capacity.⁴¹

And *Figaro v. City of Bellingham*, 2016 WL 3570564, slip op.

⁴¹ At no time as Puyallup asserted it lacks capacity so the exception to duty does not apply here.

at 6 (Div. I, 2016), cited by Puyallup in fnt 21 on *Response* 31, expressly holds that the “public utility exception” to the “general rule” exists, where a duty to provide water **does exist**, where “a municipality holds itself out as a public utility willing to supply all those who request service in a general area,” exactly as Puyallup did here by entering into the WSA:

As a general rule, a municipality does not have a duty to provide water or sewer service outside its corporate limits. *Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 381, 858 P.2d 245 (1993); *Brookens v. City of Yakima*, 15 Wn. App. 464, 465-66, 550 P.2d 30 (1976); *Harberd v. City of Kettle Falls*, 120 Wn. App. 498, 515-16, 84 P.3d 1241 (2004). **Washington courts recognize two exceptions: (1) “where a municipality holds itself out as a public utility willing to supply all those who request service in a general area,” and (2) where “the parties show a mutual intent to contract with each other.”** *Brookens*, 15 Wn. App. at 466; *Harberd*, 120 Wn. App. at 516 (quoting *Irvin Water Dist. No. 6 v. Jackson P'ship*, 109 Wn. App. 113, 122, 34 P.3d 840 (2001)); see also *Fire Prot. Dist. No. 12*, 122 Wn.2d at 381-82.

(1) Public Utility Exception

¶29 **The public utility exception recognizes that a contract to supply water or sewer service may be found by implication “where a municipality holds itself out as a public utility willing to supply all those who request service in a general area.”** *Harberd*, 120 Wn. App. at 516 (quoting *Brookens*, 15 Wn. App. at 466).

Thus in all cases cited by Puyallup, the distinguishing factor

which supported a ruling that no duty to provide water existed is that each Court found that the provider had NOT held its self out as the exclusive service provider, thus there was no implied contract that overcomes the “general rule.” That is flatly not the case here, where Puyallup contractually bound its self through the CWSP to be the exclusive water provider for its service area⁴², which included Appellants.

The sole exception to the “no implied contract” distinction is the *Governor's Point Development Co. v. City of Bellingham*, 175 Wn.App. 1008 (Div. I, 2013) case cited in Puyallup's *Response* at 31 ft 21, where the Court found the provider had no duty to provide water because Plaintiffs waited too long to bring their claim and were barred by the statute of limitation, and that Plaintiff was a bulk water purchasers and not a retail water service users such that RCW 43.20.260 did not apply.⁴³

7. Puyallup's Duty Reinforced by Clear State Law.

⁴² CP 1281-1288, CP 1289-1294

⁴³ Plaintiff “sued the City for breach of an implied contract to provide water and for a declaratory judgment that the City had violated RCW 43.20.260. [*2] The trial court granted the City's motions for summary judgment and dismissed GPDC's case. ...Even if such an implied contract existed, the statute of limitations on GPDC's implied contract cause of action began to run in the early 1990s, when the City unequivocally refused to provide water to GPDC's proposed development... We affirm the trial court's grant of summary judgment on the implied contract claim. We also affirm dismissal of GPDC's claim based on RCW 43.20.260, which applies to retail water service contracts and not to bulk water purchasers like GPDC” *Governor's Point, Id.*

RCW 43.20.260 imposes a duty on water providers to provide water to retail users as were Appellants where provider, meets the following criteria, which Puyallup did at all time relevant herein:

A municipal water supplier, as defined in RCW 90.03.015, **has a duty** to provide retail water service within its retail service area if: (1) Its service can be available in a timely and reasonable manner; (2) the municipal water supplier has sufficient water rights to provide the service; (3) the municipal water supplier has sufficient capacity to serve the water in a safe and reliable manner as determined by the department of health; and (4) it is consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the service area and, for water service by the water utility of a city or town, with the utility service extension ordinances of the city or town.

Puyallup has never contended that it lacked capacity. And here, Appellants' Subject Property was properly zoned for the requested Commercial use CP 1283 (HE Findings).

8. Puyallup Fails to Address and therefore Waives State Pre-emption issue.

Puyallup fails to address and therefore waives any contest of Appellants' analysis that the state has pre-empted water service law. The consequence is that Puyallup's argument that the city by its own code can escape its duties and responsibilities for providing water service as required by state law **also fails**. Allowing a local

city to bypass its compliance with state-approved water system plans, where the state has preempted the field, also runs afoul of the “purpose” of the state’s water system plan approval legislation.⁴⁴ Puyallup’s conflicting ordinance must yield to the state statutes which impose the duty to serve since the state preempts the field, leaving no room for concurrent jurisdiction.

9. Puyallup “Policy” Argument Not Convincing

As perhaps a last gasp, Puyallup argues in a footnote⁴⁵ that finding a duty via the CWSA would be “bad policy”. It may well be true that every breach of the duty to provide water pursuant to a CWSA does support a RCW 64.40 claim, but policy-wise, that is not a bad thing. Puyallup argues that “Such action would ignore the statutory predicate requirements for liability under (sic) ch.

⁴⁴ **The [state] legislature hereby finds that an adequate supply of potable water for domestic, commercial, and industrial use is vital to the health and well-being of the people of the state.** Readily available water for use in public water systems is limited and should be developed and used efficiently with a minimum of loss or waste.

In order to maximize efficient and effective development of the state's public water supply systems, the [state] department of health shall assist water purveyors by providing a procedure to coordinate the planning of the public water supply systems.

RCW 70.116.010-Legislative declaration. And see: RCW 70.116.020 - Declaration of purpose.

⁴⁵ Fnt 20, page 30: “Otherwise, every time there was a request for relief under the Regional Water Service Agreement or one of the water service statutes, it would turn such a claim into an automatic ch. 64.40 liability claim simply based on a “dispute” between a water purveyor (for example, the City) and a water service applicant (such as Spice). Such action would ignore the statutory predicate requirements for liability under ch. 64.40 and turn it into a contract liability statute.

64.40⁴⁶”- but the predicate requirements actually are precisely aligned:

- The CWSA and controlling Pierce County Code at relevant times defines that a lapse of 120 days is failure to timely provide water service. CP. 124, 586-661, at 639.
- A government entity’s “failure to act” is the second prong by which an aggrieved owner of an interest in real property may achieve relief under RCW 64.40010(6)⁴⁷.

Motivating water providers to meet their duty and to provide consequence when they do not is precisely the type of accountability that Chapter 64.40 was intended to reinforce. The purpose of the statute was to provide “some measure of relief for applicants who are mistreated” by arbitrary and capricious government action, **or lack of action**. See *Smoke v. City of Seattle*, 79 Wn.App. 412, 902 P.2d 678 (1995)(citing Senate Journal, 47th Legislature (1982), at 1449).

10. Puyallup’s Attempt to Distinguish *Stanzel* Simply Not Credible.⁴⁸

Puyallup’s attempt to distinguish *Stanzel* is not convincing. The differences that Puyallup argues would mean that no case would ever have precedential value (different appellants, case numbers,

⁴⁶ Id.

⁴⁷ ““Act” also means **the failure of an agency to act within time limits established by law** in response to a property owner's application for a permit:

⁴⁸ *Response*, 34-36.

attorneys⁴⁹ ...)⁵⁰

**C. Court Erred In Granting Puyallup 2013
Summary Judgement⁵¹**

1. Err in Dismissing Declaratory Judgement.

Puyallup provides no legal authority in support of its claims that the Trial Court properly dismissed the Declaratory Judgement relief, and that an appeal now is “final, binding and unreviewable”.

⁵² When a brief lacks citation to legal authority, cogent argument, or

⁴⁹ *Response* at 35.

⁵⁰ See Appellants’ Opening Brief at 16-17 and 42-44.

⁵¹ See the Trial Court’s June 21 2013 Order (CP 1141-1145) where the court: ORDERED, ADJUDGED AND DECREED the Pierce County Hearing Examiner’s August 7, 2007 decision is final and binding, and any claims arising out of that decision are now barred from judicial or other review; (CP 1143) and, it is hereby also

ORDERED, ADJUDGED AND DECREED that Petitioners’ LUPA claim is final, binding and “fully adjudicated,” and any further trial court review of or claims arising out of that LUPA Petition are barred, and that claim is hereby DISMISSED WITH PREJUDICE (CP 1143-4)

ORDERED, ADJUDGED AND DECREED that the Respondent City of Puyallup’s Motion for Summary Judgment is hereby GRANTED; and, it is hereby also ORDERED, ADJUDGED AND DECREED that all claims and causes of action in this matter are hereby DISMISSED WITH PREJUDICE; (CP 1144)

The Court based its Orders on “conclusions” (CP 1143) that:

(1) There has been no compliance with the Court’s September 12, 2008 Order and no remand to the Hearing Examiner, (2) Petitioners have signed a stipulation acknowledging that the LUPA matter “has been fully adjudicated” signed on 23 May 2013 and properly before the Court. (3) the Pierce County Hearing Examiner’s August 7, 2007 Decision is final and binding; (4) Petitioners have not complied with the City of Puyallup’s water service requirements, and never submitted an application for water service or change of water service to the City; and (5) Petitioners cannot meet various predicate requirements for a cause of action under RCW 64.40 and therefore Petitioners’ RCW ch. 64.40 damages claim is not ripe and Plaintiffs lack standing to pursue that claim. (CP 1143). Like Puyallup, the Trial Court is wrong.

⁵² *Response* at 37-38. “Appellants’ declaratory judgment claim, an alternative to the now final and unreviewable LUPA claim (see below), was bifurcated from the ch. 64.40 claim. It too, is final, binding and unreviewable. Additionally, the Court’s September 12, 2008 Order on p. 3, ,5, provides:

references to the record, or includes mere conclusory argument, in violation of RAP 10.3(a)(6), the issue does not merit this Court's consideration. *Brownfield v. City of Yakima*, 178 Wn. App. 850, 876, 316 P.3d 520 (2013).

Further, Puyallup and the Trial Court are just plain **wrong**. The time limit for appealing the 2008 Order began when the Trial Court issued its "final judgement". RAP 2.2.⁵³ Further, RAP 2.2 (d) also conclusively provides, "a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review **until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties**"⁵⁴ While a party may

With the entry of this Order as to the LUPA matter, the declaratory judgment action is moot.

CP 668. The Court found the declaratory judgment claim to be "moot" on September 12, 2008, and it became a final decision on that date. Again, Appellants never sought to modify or reconsider the mootness ruling, and they never sought appellate view of this part of the Order. The time limits for seeking reconsideration, modification or discretionary review (or appeal) of this claim have expired, and this declaratory claim is moot is final, binding and unreviewable."

⁵³ RAP 2.2 (a) Generally. Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), **a party may appeal from only the following superior court decisions:**

(1) Final Judgment. The final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.

⁵⁴ RAP 2.2(d) Multiple Parties or Multiple Claims or Counts. In any case with multiple parties or multiple claims for relief, or in a criminal case with multiple counts, an appeal may be taken from a final judgment that does not dispose of all

pursue an interlocutory review, that act is a discretionary decision of the party. Here Appellants did not chose that path. Instead, the all Orders of the Trial Court were appealable 30 days after the final judgement, here May 20, 2016.⁵⁵ Appellants timely appealed. Id.

2. Err Dismissing LUPA in 2013.

Puyallup and the Trial Court are wrong again that Appellants' Stipulation with Pierce County CP 1920-1921 renders the LUPA issues non-appealable "nullity". See this Appeals Court's *Ruling dated December 17, 2013* on file herein, and see analysis above in Section II.C(1).

3. Trial Court Abused Its Discretion.

The Trial Court also erred here, in ruling on Puyallup's redundant Motion to dismiss the LUPA issues in 2013, since the Trial Court had already ruled on the LUPA issues in 2008. The sole remaining issues in 2013 were Appellants' tort and RCW 64.40

the claims or counts as to all the parties, but only after an express direction by the trial court

for entry of judgment and an express determination in the judgment, supported by written findings, that there is no just reason for delay. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. The time for filing notice of appeal begins to run from the entry of the required findings. In the absence of the required findings, determination and direction, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties.

⁵⁵ See subjoined Dec of Counsel and attached **Exhibit A** – Docket.

claims. Yet Puyallup argued in 2013 and in 2015 that the Trial Court should re-visit and dismiss LUPA claims based on “Appellants' failure to follow through with remand to the Hearing Examiner” *Response* at 40. In doing so Puyallup and the Trial Court ignores that Appellants’ lawful alternative to complying with the Order on remand was to appeal the 2008 Order when a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties was entered per RAP 2.2(d).

Puyallup reliance on *State ex rel. Dawson v. Superior Court*, 16 Wn.2d 300, 304, 133 P.2d 285(1943)⁵⁶ is also misplaced. A trial court's order exercising its inherent power to dismiss a case is reviewed for an abuse of discretion. *Stickney v. Port of Olympia*, 35 Wn.2d 239, 241, 212 P.2d 821 (1949). A trial court abuses its discretion when its decision is manifestly unreasonable, based on untenable grounds, or made for untenable reasons. *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P. 3d 115 (2006). This standard is also violated when a trial court bases its decision on an erroneous view of the law. *Mayer*, 156 Wn.2d at 684. The trial court gave four reasons for exercising its inherent power to dismiss the LUPA issues, all essentially are based on Appellants’ failure to

⁵⁶ *Response* at 41: (When confronted with an action not diligently prosecuted, dismissal of the action is necessary in the "orderly administration of justice").

“carry out” the 2008 Order.⁵⁷ This reasoning fails to support dismissal, as it ignores that Appellants’ lawful alternative to complying with the Order on remand was to appeal the 2008 Order when a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties was entered per RAP 2.2(d).

And no other discretionary basis supports dismissal. A trial court may dismiss a case pursuant to a court rule or by exercising its inherent power to dismiss cases. See *Snohomish County v. Thorp Meats*, 110 Wn.2d 163, 166 -67, 750 P.2d 1251 (1988). But a trial court may exercise its inherent power to dismiss a case "only when no court rule or statute governs the circumstances presented." *Thorp Meats*, 110 Wn.2d at 167. Here, each of CR 41(b)(1) and (2) provides an independent method of involuntary dismissal under distinct circumstances. *Wallace v. Evans*, 131 Wn.2d 572, 578, 934 P.2d 662 (1997). Under both provisions, involuntary dismissal is mandatory when the criteria for dismissal are met, *Thorp Meats*, 110 Wn.2d at 167; *Vaughn v. Chung*, 119 Wn.2d 273, 278, 830

⁵⁷ (CP 1143) that: “(1) There has been no compliance with the Court's September 12, 2008 Order and no remand to the Hearing Examiner, (2) Petitioners have signed a stipulation acknowledging that the LUPA matter “has been fully adjudicated” signed on 23 May 2013 and properly before the Court. (3) the Pierce County Hearing Examiner's August 7, 2007 Decision is final and binding; (4) Petitioners have not complied with the City of Puyallup's water service requirements, and never submitted an application for water service or change of water service to the City;” and

P.2d 668 1992), but **the criteria of neither rule is met here.** CR 41(b)(1) limits a trial court's inherent power to dismiss actions for want of prosecution. *Wallace*, 131 Wn.2d at 575, 577. A trial court may dismiss for want of prosecution on the basis of its inherent power only where CR 41(b)(1) does not address the circumstances, i.e., where the plaintiff has engaged in "unacceptable litigation practices other than mere inaction." *Bus. Servs. Of Am. II, Inc. v. WaferTech LLC*, 174 Wn.2d 304, 308, 274 P.3d 1025 2012) (quoting *Wallace*, 131 Wn.2d at 577). Examples of such unacceptable practices include failures to appear, filing late briefs, and similarly egregious sorts of dilatory behavior." *Bus. Servs.*, 174 Wn.2d at 311. No such proper basis was cited by the Trial Court. Here, Puyallup's dismissal motion was not brought under CR 41(b)(1)⁵⁸ and dismissal on this basis claimed now on appeal would be improper. And dismissal under CR 41(b)(2) is clearly does not apply.⁵⁹ By basing the order of dismissal on

⁵⁸ CR 41(b)(1) permits a trial court to dismiss a case on a party's motion when the plaintiff neglects to note the action for trial or hearing within 1 year after any issue of law or fact has been joined," unless the moving party caused the delay. "Such motion to dismiss shall come on for hearing only after 10 days' notice to the adverse party." CR 41(b)(1).

⁵⁹ Dismissal under CR 41(b)(2) is appropriate when three elements are met: (1) the trial court's clerk mails the required notice to the parties, (2) there is no action of record in the case during the 12 months preceding the notice, and (3) within 30 days following the notice, there is no action of record and no showing of good cause for continuing the case. *Vaughn*, 119 Wn.2d at 278. In the required notice,

untenable reasons; the trial court abused its discretion. See *Mayer*; 156 Wn.2d at 684.

4. Trial Court Also Erred in Dismissing RCW 64.40 claims.

Puyallup argues that because the “Hearing Examiner's 2007 Decision is now final, binding and in favor of the City, under established case law this determination precludes liability under ch. 64.40”. *Response* at 41. The Court erred in its basis for dismissing the RCW 64.40 claims⁶⁰, by accepting Puyallup’s faulty arguments, essentially that compliance with the 2008 Order was a condition precedent to maintaining a RCW 64.40 action.⁶¹ Based on the analysis of the above Section C.3 herein, Puyallup’s arguments fail and the Court erred.

Nor are Puyallup’s cited cases on point (again):

- Puyallup claims that Appellants’ “LUPA was not completed” and cites in support *Mercer Island Citizens for Fair Process v. Tent City 4*, 156 Wn. App. 393, 232 P.3d 1163 (2010) (“the plaintiffs failure to challenge that decision

“the clerk of the superior court shall notify the attorneys of record by mail that the court will dismiss the case for want of prosecution” unless action of record occurs or a showing of good cause is made within 30 days. CR 41(b)(2)(A).

⁶⁰ 5) Petitioners cannot meet various predicate requirements for a cause of action under RCW 64.40 and therefore Petitioners’ RCW ch. 64.40 damages claim is not ripe and Plaintiffs lack standing to pursue that claim. (CP 1143). Like Puyallup, the Trial Court is wrong.

⁶¹ *Response* at 43-44: “Appellants’ failure to comply with the Court’s Order, complete the LUPA process before it became time-barred, submit an application for water service from the City, comply with City water service requirements, and otherwise exhaust administrative remedies each bar this claim. At its core, the ch. 64.40 claim simply was never ripe...”

in a timely LUPA petition bars... claims for damages...” *Response* at 45. *Mercer Island* stands for the clear rule that Plaintiffs failed to timely file a LUPA claim, *Mercer Island* has no language about “failing to complete a LUPA action”, whatever that means. Here, Appellants timely filed their LUPA action and included a RCW 64.40 action within it. Puyallup again wrongly argues that to “finish” their LUPA appeal, Appellants would have to abide by the 2008 Order of remand, with no supporting authority (or logic).

- Next Puyallup cites to *Shaw v. City of Des Moines*, 109 Wn. App. 896,901, 37 P.3d 1255 (2002). But the holding there expressly related to the Trial Court’s failure to grant a CR 60 motion to vacate dismissal.⁶² Any LUPA and 64.40 comments are pure dicta.
- In *Mower v. King Co.*, 130 Wn. App. 707, 720, 125 P.3d 148 (2005), cited by Puyallup, there was also no analysis.⁶³
- In *Asche v. Bloomquist*, 132 Wn. App. 784, 133 P.3d 475 (2006), there were no RCW 64.40 damages claimed.⁶⁴

5. Puyallup’s Argument Wrong That RCW 64.40 Action Was Time Barred.

⁶²*Shaw* at 11: “Accordingly, we hold that the trial court abused its discretion in denying Shaw’s motion to vacate the Clerk’s Order dismissing his case, and reverse the order denying the motion to vacate. We remand for reinstatement of Shaw’s case, and direct the trial court to exercise its discretion on the question of whether Shaw should be allowed to amend his complaint”

⁶³ “Mower admits the superior court properly granted summary judgment in favor of the County on the issue of damages under RCW 64.40.020 if the underlying LUPA or mandamus arguments are correct. He admits that only if this court reverses either of those rulings will he be entitled to pursue such a damage claim in the superior court. Given our decision, the grant of summary judgment in favor of the County is affirmed.”

⁶⁴ “In conclusion, although there may be some nuisances, either private or public, which may be brought outside LUPA’s framework, in this case the claims directly related to the invalidity or the misapplication of the zoning ordinance. Because the action was not brought within 21 days of the date when the land use decision was issued, the action is barred, and dismissal under CR 12(b)(6) was appropriate because the action failed to state a claim upon which relief could be granted.”

It's hard to make sense of Puyallup's *Response* at 44:

Thus, any purported decisions made by the City regarding Appellants' claimed requests for water service, or the City's enforcement of its codified annexation requirement, **became lawful, valid and final upon issuance of the Court's [2008] Order** - or, at least at the very latest once the Pierce County Hearing Examiner lost jurisdiction to entertain any remand. Either on September 12, 2008 or at the latest January 1, 2011...

Appellants filed their RCW 64.40 action as part of their LUPA appeal, filed in August 2007, CP 1-28, which predates both deadlines claimed by Puyallup. It is nonsensical to argue the RCW 64.40 claims are barred under these facts.

6. And Trial Court Wrongly Ignore RCW 64.40's 2nd Basis For Liability: "Failure to Act".⁶⁵

Both Puyallup and the Trial Court ignore RCW 64.40's second basis for impose liability (failure to act) and concentrated only on the "arbitrary capricious" prong.⁶⁶ RCW 64.40.020(1) defines the term "act" as used in the statute:

"Act" means a final decision by an agency which places requirements, limitations, or conditions upon the use of real property in excess of those allowed by applicable regulations in effect on the date an application for a permit is filed. **"Act" also**

⁶⁵ Puyallup's other argument in its 2013 Motion to Dismiss the RCW 64.40 damages were that Petitioners never exhausted administrative remedies, filed an application with Puyallup, or timely appealed. Puyallup's arguments are flatly contrary to the HE's Findings and Conclusions (verities now) and are pure red herrings. See Appellant's Opening Brief at 47-57.

⁶⁶ See Response at 51: "there was no arbitrary, capricious or unlawful act by the City which would support liability under ch. 64.40. A ch. 64.40 claim requires a showing that the City's conduct was "arbitrary and capricious," or otherwise "unlawful." RCW 64.40.020(1)."

means the failure of an agency to act within time limits established by law in response to a property owners application for a permit...

Damages have been expressly awarded for delay in RCW 64.40. *Wilson*, 122 Wash.2d at 823, 863 P.2d 1336 (claim under RCW 64.40.020); *Callfas v. Dep't of Constr. & Land Use*, 129 Wash.App. 579, 120 P.3d 110 (2005) (claims under 42 U.S.C. § 1983 and RCW 64.40.020). In *Wilson v. City of Seattle*, 122 Wash.2d 814, 863 P.2d 1336 Wash., 1993, property owners brought statutory action against municipality for its delay in processing land use permit application. There the city unsuccessfully tried to shield its self (using exhaustion – as does Puyallup here, but slightly differently,) by claiming plaintiffs' right to sue municipality, had to be conditioned on plaintiffs' first filing notice of claim with municipality.

Callfas v. Department of Const. and Land Use, 129 Wash. App. 579, 120 P.3d 110, Wash. App. Div. 1, 2005 at 588 also made clear when awarding damages:

Such a challenged “act” may be the denial of a permit application or the attaching of conditions to the issuance of a permit. **It can also be the act of taking no action on an application at the point at which other laws require that action be taken.**

And:

When the “final decision” as defined by RCW 64.40.010(6) is “arbitrary, capricious, unlawful or exceed[s] lawful authority,” the applicant has a valid claim under RCW

64.40.020(1). Similarly, when the permitting authority has failed to act on the application within the time a state statute or a local ordinance requires, the applicant has a valid claim under the other prong of that section.

Id at 560. Appellants established all facts predicate for damages under the “failure to act” basis:

- Appellants all held an interest in the Subject Property⁶⁷
- Puyallup “**failed to act**” (issue Petitioners’ water service)⁶⁸
- “**within the time a state statute or a local ordinance requires**” (The Pierce County Coordinated Water System

⁶⁷ See Chart of Ownership Interests at CP 4758-47-60. From at least February 28, 2004 (execution of the DPOA) through August 29, 2007, the date of filing the LUPA 2 Appeal, Petitioners had various interests in the Subject Property, including:

- Ms. Mathews’ initial ownership of the Subject Property, and Mr Spice held a 33% interest holder in the subject property, by Quit Claim Deed dated December 1, 2007 and recorded June 3, 2009. By that Deed, Ms. Mathews deeded a one-third interest to Ted Spice in the property which is subject to this LUPA and damages claim. CP 4879.
- By Quit Claim Deed dated June 9, 2009 and recorded December 21, 2009, Ms. Mathews deeded the remaining two thirds interest to Ted Spice in the property which is subject to this LUPA and damages claim. CP 4880.
- Mr. Spice’s as managing partner status per the Plexus Investments, LLC Operating Agreement (authority to “oversee any current projects or going concerns”), CO 4854-4877 at Paragraph 2.4.
- As a member of Plexus Investments, LLC, Mr Spice also held title to the property, (“Members shall have authority to act on behalf of company,”), CP 4854-4877 and
- Mr. Spice had been granted broad powers to act as Ms. Mathews’ attorney-in-fact through the February 28, 2004 DPOA. The DPOA includes the express power to sue to enforce Mr. Mathews’ property rights. CP 4849-4853.

⁶⁸ 5. It is **undisputed** that the city of **Puyallup is the exclusive water provider** for this particular parcel.

3. ...Clearly **timely water service is not being provided by the City of Puyallup given that they have not to this day agreed to provide water service.**

(Decision) “**Puyallup is unwilling to provide timely and reasonable water service to the Applicant’s parcel.**”

HE 2005 Finding 5, Conclusions 3 and Decision CP 122-124.

Plan defines “timely service” as receiving a commitment to provide service within 120 days of the request. Clearly more than 120 days have passed. *Id.*)⁶⁹

- Appellants pursued and **exhausted their administrative** remedies under appropriate PCC Water dispute process *per Stanzel v. Puyallup, Stanzel v. City of Puyallup* 150 Wash.App. 835, 209 P.3d 534, Wash. App. Div. 2, 2009:
 - Appellants sought out the proper remedy dictated by the Regional Water Plan, to which at that time, Puyallup

⁶⁹ The County Utility Staff charged with administering the Regional Water Plan Dispute Resolution Process supported Petitioners’ efforts, as the following Hearing Examiner Decision summary of testimony attests:

Appearing was SUSAN CLARK who presented the Public Works and Utilities Staff Report. She submitted previous water dispute decisions and attached them to the staff report. **She provided the background for this dispute. The Public Water System Coordination Act requires water systems to establish service areas.** The City of Puyallup is the designated service area for this particular parcel. The applicant is required to obtain water service from the City of Puyallup. **They are the exclusive provider. They City of Puyallup is required to offer timely and reasonable service to the applicant.** The site is currently used in a residential capacity, but it is zoned for commercial use in the Employment Center zone classification. The applicant intends to redevelop the property and wants the City of Puyallup to continue to provide water to the site. **The applicant requested water service from the City of Puyallup. On or about June, 2004, the applicant attended a pre-application meeting. He was eventually told in August that the City could not issue a water availability letter until his property was in the process of being annexed. There have not been enough signatures from property owners within the immediate area to proceed with annexation, thus the City would not issue a water service availability letter.** The Pierce County Coordinated Water System Plan defines “timely service” as receiving a commitment to provide service within 120 days of the request. Clearly more than 120 days have passed. The City of Puyallup has elected not to provide water. The applicant has requested approval to provide water by well. Staff recommends that the applicant be allowed to pursue other options for water service. Planning Staff is also asking that the Examiner rule that other applicants in the same position be allowed to pursue other options.

CP 120. Emphasis added.

was bound.⁷⁰

- Appellants applied to the Pierce County Hearing Examiner, the office *precisely* designated by the Regional Water Plan to arbitrate and remedy disputes between purveyors and customers. See then applicable Pierce County Code Ch. 19D. 140.⁷¹
- Any claimed failure to exhaust remedies by filing City application is barred, as it would have been futile to do, in light of the City's declared unwillingness to provide service.⁷²
- Appellants timely filed their ch.64.40 RCW actions in conjunction with their LUPA Petition. CP 1-28.
- Appellants made an offer of proof to show damage due to delay as defined by *Parkridge*: **ascertainable damages for lost profits, loss of favorable financing, increased construction costs due to inflation**⁷³
- No internal City process can defeat the state law remedy afforded by either the Water System requirements for service under ch 70 RCW or for delay damages relief under ch.64.40 RCW.

D. Superior Court Erred By Order Dated July 20, 2015, By Finding One Of The Three Petitioners To Be An Indispensable Party, With The Result That Upon

⁷⁰ The Regional Water Plan was at that time implemented by provisions of Pierce County Code Ch. 19D. 140, which provisions included a dispute resolution process at §19D.140.090. CP 97, 122-3, 610-20.

⁷¹ The premise of Puyallup's (redundant) Second Summary Judge met Motion response and its "failure to exhaust administrative remedies argument is that Puyallup should have both the role of **adversary** and **arbitrator** to a water service dispute. This is precisely the un-even situation the regional Plan sought to avoid.

⁷² 8/3/2004 Colleen Harris Memo to File: Puyallup refusal to provide water. 8/16/2004-Colleen Email to Spice Denying water Service CP 120, 122, 627-628, 1108, and the HE's determined of Puyallup's denial of water service, which are verities.

⁷³ Dec of Ethan Offenbecker. CP 991-1002.

One Petitioner's Death, The Court Found That The Claims Of The Remaining Two Petitioners Were Extinguished.

This Appeals Court should ignore Puyallup's continued sophistry when it wrongly claims at *Response* 58, that:

Appellants do not cite one case in support of their argument on pages 58-65 of their Amended Brief that the Estate should have been ordered to join the litigation and that the litigation could continue without the Estate.

First, while no *cases* are cited in this section, Appellants do cite to CR 19, CR 25 and RCW 11.40.110. Second, Appellants have **never** argued that the "the Estate should have been ordered to join the litigation" as Puyallup claims. *Response* at 58, 64. Instead, Appellants' Counsel repeatedly explained to the Trial Court their belief that under the facts and law of this case, they had a duty to continue to represent surviving Appellants.⁷⁴ Substitution of the Estate is flatly not required for the case to proceed as to surviving Appellants.

Second, Appellants have **never contested** that "The death of a client terminates the lawyer-client relationship, and the lawyer for the deceased party may no longer represent the decedent's interests." It is this maxim that prevented Appellants' Counsel from

⁷⁴ See Appellants' Opening Brief at 62-76.

“terminating, moving to substitute the estate, amending the Complaint to delete Ms Mathews”, or “putting limiting language on her signature blocks indicating she was signing for fewer than all three Plaintiffs, “which are all actions Puyallup argues should have been done.

Appellants’ accurate position is that instead of vacating the prior SJ Order, the Trial Court should have simply modified the Orders to exclude Ms Mathews and leaving the Orders intact as to surviving Appellants (Appellants of course reserving their stance that the Orders were flawed in substance).

1. Puyallup Misleads with its Cited Authorities As to Duty Upon Death

Puyallup cites several cases and language from them for the idea that when the plaintiff dies, all orders entered were void and the case could not proceed. But Puyallup does not disclose most of them were very different – there was only one plaintiff.

- Puyallup cites the case of *Fariss v. Lynchburgh Foundry*, 769 F.2d 958 (4th Cir.)(1985), where the PR of the estate was the sole plaintiff so without a substitution for that PR there was no other plaintiff to take the case forward. (*Puyallup Response* at 60).
- In *Cheramie v. Orgeron*, 434 F.2d 721 (5th Cir.)(1970), the Attorney represented multiple defendants. One party (Rodrigue) died just days before judgment was entered against all defendants. At oral argument prior to judgment,

defense lawyer offered a stipulation to continue representing Rodrigue which the court and plaintiff's counsel accepted. Rodrigue's PR was never substituted and 10 years later remaining defendants claimed failure to substitute the PR should abate the judgments against them. Court refused and acknowledged the attorney's right to keep on representing the remaining defendants. (Puyallup Response at 60). On the issue whether the judgment against Rodrigue should be vacated, the Appeals court remanded to the District Court on the issue of laches because of the 10 years elapsed since the judgment. The cited language notes that after Rodrigue's death the lawyer could no longer represent him, **but noted the lawyer could represent the other parties.**

- Puyallup also cited *Bingham v. Zolt*, 683 F. Supp. 965 (N.Y.)(1988) to the Trial Court, an action by Bob Marley's estate against numerous lawyers and financial advisors, alleging fraudulently diverting Marley's and later estate assets. The language Puyallup cited was dicta, cited in relation to the estate's claim against one lawyer defendant, the lawyer claiming that the law firm only had an attorney-client agreement with Marley while alive, but the pleadings do not allege any subsequent retainer agreement between the estate and the lawyer, resulting in dismissal of the claim by the lawyer against the estate, not dismissal of all proceedings.
- In *Bossert v. Ford Motor Co.*, 528 N.Y.S. 2d 592 (N.Y.) – (1988) the sole plaintiff died. This case therefore says nothing about whether other plaintiffs can continue. (Puyallup Response at 61).
- In *Campbell v. Campbell*, 878 P.2d 1037 (Okla.) (1994) – sole plaintiff died. It is cited at *Puyallup Response* at 61, 84). The *Campbell* Court interestingly stated that under a similar Rule 25, the decedent's attorney has no authority either to move for substitution or even to suggest the death of his client upon the record. "Such action could clearly prejudice the rights of a successor party to whom that attorney bears no legal relationship."]
- In *Brantley v. Fallston General Hospital*, 636 A. 2d 444 (Md.) (1994) – sole plaintiff died.

- Puyallup also completely mis-quotes *Stella Sales, Inc. v. Johnson*, 97 Wn. App. 11, 18, 985 P.2d 391 (1999) at Response 63: “When a party to a lawsuit dies, the cause of action survives, but the action must be continued by or against the deceased party's representatives or successors in interest. *Stella Sales*, 97 Wn. App. at 18-19.”. *Stella* does not refer to “a party’s” death – it applies only when the defendant dies – which is not the case here.

That these cases had no other plaintiffs or other distinguishing factors not favorable to Puyallup should have been brought to this Court’s and everyone’s attention or the case not cited. A good advocate argues, convincingly if the advocate can, why those differences make no difference. The advocate is **not** supposed to conceal them. Likewise, Puyallup mislead by having no supporting law to its incorrect claim at *Response* 64, that “CR 25 itself and the governing case law points to the death of a client being suggested on the record immediately after it happens.” No such case law exists.

2. Puyallup Misleads with its Cited Authorities Which Do Not Support that All Owners Must Joined in RCW 64.40 action.

Ms. Mathews was a named party when the LUPA case was initiated. Sadly, she passed mid-suit. Under those facts, CR 25 applies, and allows the remaining parties to pursue relief.

The Court’s attention is drawn to *Crosby v. City of Spokane*,

137 Wn.2d 296,305-306,971 P.2d 32 (1999), where a landowner was denied a plat application and successfully obtained relief on review using pre-LUPA writ. The neighboring land owners challenged that they were necessary parties to the writ, since the neighbors participated in the administrative appeal. The Supreme Court ruled that just because a person may be a proper party with a right to intervene does not make that person a party who must be joined as a defendant under CR 19. *Id.* Significantly, the Supreme Court in *Crosby* found controlling that “Further, *during the relevant time period, no statute required that respondents-landowners be made parties to the writ proceedings.*” Therefore in the absence of any statute mandating that they be made parties, respondents-landowners were **not** found indispensable by the Court. The *Cosby* Court expressly commented on what was new law at that time: LUPA, and observed that with the adoption of LUPA, indispensable parties were now defined by that statute:

The Legislature confirmed the rationality of this rule in the 1995 Land Use Petition Act (LUPA), RCW 36.70C, which **replaced the writ of certiorari with an appellate process for most land use cases.** RCW 36.70C.040(2)(d) provides that an appellant must include as parties to any land use review proceeding ‘each person named in the written decision who filed an appeal to a local jurisdiction quasi-judicial decision maker regarding the land use decision at issue, unless the person has abandoned the appeal or the person's claims were dismissed before the quasi-judicial decision was rendered.

Crosby at footnote 6. Emphasis added. The (correct) LUPA standard was met in this case, and therefore is distinguished from all the cases relied on by Puyallup and wrongly accepted by the Court, which are simply not on point:

- *Nolan v. Snohomish County*, 59 Wn. App. 876, 880, 802 P.2d 792 (1990), is a case of a landowner appealing a government action using a **pre-LUPA** writ action. The County argued that the County Council was a necessary party. *Nolan* concludes that CR 19(a)(2) had no application to the facts of this case and that the county council is **not** a necessary party to a LUPA petition. That case does mention in dicta that a landowner is a necessary party to “zoning and other land use cases”, but cites to **pre-LUPA** cases. 59 Wn.App. 880. Here Ms Mathews was a named party when the LUPA case was initiated, as required. Sadly, she passed mid-suit. In that case, CR 25 applies, and allows the remaining parties to pursue relief. *Nolan* also expressly does not apply to this RCW 64.40 claim for damages, and concerns water service availability.
- *Wash. State Dep't of Carr. v. City of Kennewick*, 86 Wn. App. 3521, 530-31, 937 P.2d 1119 (1997), is a pre-LUPA writ action where DOC sought review of a permit denial via a pre-LUPA writ of certiorari, and city moved to dismiss. The Court found that nearby property owners are **not** necessary parties under CR 19.
- *Mood v. Banchemo*, 67 Wn.2d 835, 410 P.2d 776 (1966) also a **pre – LUPA** case holds that a property owner may not sue assert riparian rights to a drained lake, when the drainage exposed a strip of land owned by a third party, unless that third party is joined. *Mood* lacks any nexus to the facts here.
- *Cady v. Kerr*, 11 Wn.2d 1, 118 P.2d 182, 137 A.L.R. 713 (1941). This **pre-LUPA 1941** case holds that owners of two lots are both necessary parties to a **boundary dispute**. This case sought a mandate that the county commissioners establish and mark a boundary line, and held that each of the property owners with an interest in the land should be served.
- *Trans-Canada Enters., Ltd. v. King County*, 29 Wn. App. 267, 628 P.2d 493, *rev. denied*, 96 Wn.2d 1002 (1981) **non-LUPA**

case where Court ruled that an Indian Tribe was not an indispensable respondent to a mandamus action seeking to have the government repair a broken dike, because the state court lacks jurisdiction over the tribe.

- *National Homeowners Ass'n v. City of Seattle*, 82. Wn.App. 640, 919 O.2d 615 (Div. 1, 1990) is a **pre-LUPA writ** where the sole owner of land was not joined. In that case, a mobile home HOA sought to enjoin mobile home relocation permits issued by the City of Seattle to convert a mobile home park to a hardware store. The HOA did not name landowner Eagle Hardware as a party. 82 Wn.App. at 643. These facts are inapposite to landowners suing the City of Puyallup due to water service denial.
- Similarly, *Waterford Place Condo Ass'n v. City of Seattle*, 58 Wn. App. 39, 791 P.2d 908, 911 (Div. 1, 1990), **pre LUPA writ** involved a homeowner association suing only the City of Seattle in “a writ proceeding challenging a land use decision”, and failing to name the landowner.
- *Last, Ahmad v. Town of Springdale*, 178 Wn. App. 333, 341, 314 P.3d 729 (Div. 3, 2013) is a newer case, but it is **not** a LUPA case. In Ahmad, the Agent of landowner and property resident brought action against town seeking writs of prohibition and mandamus to prohibit town from enforcing building code against property. The Court held that the litigating members were not qualified attorneys and the only Muslim America could bring the writ actions. Again, this case does not apply to the facts here.

None of Puyallup's self-described “land use cases” are relevant to post LUPA times. Further, none have any application to a damages action under RCW 64.40, which on its face, entitles Plexus/ Mr. Spice to continue with the lawsuit following partial abatement pursuant to CR 25. Since Washington's Court Rules

provide a specific remedy, the out-of-state cases cited by Puyallup⁷⁵ do not warrant any consideration.

E. Puyallup Does Not Overcome that Trial Court Erred in Imposing CR 11 Sanctions.⁷⁶

A trial court abuses its discretion when its decision is manifestly unreasonable, based on untenable grounds, or made for untenable reasons. *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P. 3d 115 (2006). This standard is also violated when a trial court bases its decision on an erroneous view of the law. *Mayer*, 156 Wn.2d at 684. By basing the CR 11 Order of untenable reasons and an erroneous view of the law; the trial court abused its discretion. See *Mayer*; 156 Wn.2d at 684. See Appellant Opening Brief 62-92, and CP 4702-4722, 4723-4754, 5392-5452, copy attached, 5358-5378, 2911-3051. And, **significantly**, Puyallup's attorneys admitted on the record that they found no law which supported their CR 11 Motion. CP 5259- 5260.

A court's inherent authority is only exercised upon a showing of bad faith. *State v. S.H.*, 102 Wn. App. 468, 8 P.3d 1058 (2000).

"Every court of justice has power ... [t]o enforce order in the

⁷⁵ Pennsylvania, Delaware, Kentucky (interpreting a Kentucky Revised Statute) and Alabama (*Motion* at 11-13).

⁷⁶ See Appellant Opening Brief at 62-91.

proceedings before it, [and] [t]o provide for the orderly conduct of proceedings before it" *S.H.*, 102 Wn. App. at 473 (2000) (quoting RCW 2.28.010(2)-(3)). An explicit finding of bad faith is compulsory for any sanction to exist. *Id.* at 474-75; *State v. Gassman*, 175 Wn.2d 208, 283 P.3d 1113 (2012) (circumscribing courts' inherent authority to sanction in reversing a \$2,000 sanction against State for late amendment of an information; conduct must be willfully abusive). There is nothing shown that could be properly concluded is "vexatious," or "willfully abusive," about trying to advance the surviving Appellants' rights. All surviving Appellants' counsel did was to represent a living client and surviving entity, who each had their own reasonable argument supporting a claim of damages under the statute independent from any other plaintiff, alive or dead.

F. Puyallup & Trial Court Wrong About Timing.

Puyallup suggests in its CR 11 arguments that CR 25 required telling it of the death, apparently, at the time it occurred. CR 25 is anything but clear. In section (a)(1) the rule says that if there is no substitution, "the action may be dismissed as to the deceased party." That language generally allows the other plaintiffs, if there are any,

to proceed without whatever damages were recoverable only by the decedent.

Subsection (a)(2) speaks of certain actions “where the right sought to be enforced survives only to the surviving plaintiffs, the action does not abate.” Only where the action does not abate, in subsection (a)(2), is there the requirement that the death be suggested upon the record, then the case can proceed. It is not easily understood when the right to be enforced survives only to the surviving plaintiffs (perhaps a joint tenancy with right of survivorship). That was not the situation here, and in all candor there appears to be no requirement generally in this case for someone to say something until any serious settlement talks arose, or a judgement was to be taken against the plaintiffs. And that is exactly what occurred. Here, the death was put on the record via the October 10, 2013 notice of appeal of the substantive ruling under RCW 64.40 before the prevailing party fees were awarded against any plaintiff in December 2013, two months later. Puyallup apparently just didn’t read the document.

It takes no genius to wonder, why wouldn’t Puyallup come to the Court when it learned about the death, and ask the Court to undo the effect of any order against only the decedent (and her estate that

would not appear). Why did they not even argue to preserve their orders and the prevailing party judgement against the other two plaintiffs, Spice and the LLC? The law would have supported them. Indeed CR 25(a)(1) says if the Estate will not substitute, the dismissal is “as to the deceased party.”

Puyallup was perfectly entitled to argue that the other two plaintiffs had been in the case, acted, and fully defended when the Court dismissed the case on substantive grounds regarding the statutory claims. There was no real reason shown that the Orders against the active parties had to be abandoned, except, Puyallup reached too far, and boxed itself into a corner when arguing the Orders were void and had to dismissed “as void ab initio” .

By citing to cases where there were no other plaintiffs, Puyallup could not then also argue dismissal only as to the deceased and that the judgments could remain as to the surviving Plaintiffs. Then, when as a result, Puyallup was left empty handed as to money judgement, by necessity, their counsel turned to a CR 11 argument as a basis for a fee award. In fact, surviving Appellants’ lawyer did have the right, the duty and the authority to act for surviving

Appellants.⁷⁷

**G. The Superior Court Erred By Order Dated April 15, 2016
“Clarifying And Amending” Previous Order Vacating
Attorney Fees By Re-Instating Attorney Fees.**

It is patently not correct as Puyallup claims, that “The

Appellants do not make any argument in support of their Fifth

Notice of Appeal”. *Response* at 96-7. See Appellants’ Opening

Brief at 90-100.

This Appeals Court should vacate the April 15, 2016 Order
(and companion amending Order of May 20, 2016, CP 7528-7529)
because it expressly awards fees based on RCW 64.40, when the
Motion it granted was based on **CR 19, which has no attorney fee
provision.**

Puyallup made its legal sleight of hand in the Order at
Conclusion of Law # 2, when it morphed an attorney fee award
based on RCW 64.40 to an award based on “prevailing party”. But
no law supports attorney fee award at trial level based on

⁷⁷ As argued to the Trial Court by counsel for the other attorney against who Puyallup sought sanctions: “why would the City rush to give up its larger award against the two remaining plaintiffs from the simple fee shifting from the losing party? The answer now appears obvious. They City realized there is very doubtful collectability of the judgment from Spice and the LLC. So what they set out to do was transmute the judgment against the parties to a judgment against their lawyers. That would perform the trick of the ancient alchemists – turn base metal into gold!... It is apparent the City voluntarily sacrificed the fools gold of the judgments against Spice, in order to create additional harm they could claim against the lawyers they know can pay.” Stephen M. Hansen’s Memorandum Opposing Puyallup’s CR 11 Sanction Motion CP 4890-4905 at page 13.

“prevailing party” unless the fee award is based on contract or statute. While RCW 64.40 has a prevailing party attorney fee provision, CR 19 does not. Any fee award lacking sufficient findings and conclusions should result in remand. *Mahler v. Szucs*, 135 Wn.2d 398, 434-435 (1998).

2. On May 31, 2013, the Court granted the City's Motion for Summary Judgment and dismissed this case. At that time, the Court also awarded the City reasonable attorneys' fees and costs under RCW ch. 64.40.020(2). This oral decision was memorialized in the Court's written order entered on June 21, 2013. **The City, therefore, was the prevailing party in this action. The City continues to be the prevailing party by virtue of the courts Summary Judgment Order of July 20th 2015.**

CP 5533. Emphasis provided. The Order's Conclusions and the Court's Appendix make clear the error:

8. Here, the Court is persuaded that the time entries identified above by attorneys Walter and Yamamoto were fair, reasonable, necessary and directly related to defense of Plaintiffs' ch. 64.40 damage claim.

CP 5536.

10. The Court concludes that, with the exception of 16 hours of attorney Yamamoto's time entries which were duplicative of attorney Walter's time entries, the time entries by attorneys Walter and Yamamoto are fair, reasonable and necessarily incurred in defense of Plaintiffs' ch. 64.40 damage claims.

CP 5537.

In total, the Court concludes that the Defendant City of Puyallup is entitled a total award of \$132,790.65 as against Ted Spice, Plexus Development LLC, and Plexus Investments LLC, jointly and severally, in both reasonable attorneys' fees and compensable costs in defending Plaintiffs' ch. 64.40 damage claim.

CP 5537.

However, on July 20, 2015, the Court not only granted the City's motion to vacate "all decisions, orders, and judgment," but also **granted the City's second motion for summary judgment based on the grounds that Mr. Spice and Plexus had failed to join Doris Mathews' estate as an indispensable party.**

CP 5540. Emphasis provided

In the instant case, the City's motion for renewed fees similarly does not seek to alter or amend the Court's July 20, 2015 motion to vacate, **but rather seeks what is due from the July 20, 2015 motion for summary judgment."**

CP 5541. Emphasis provided. However, the July 20, 2015 motion was limited to CR 19 and NOT RCW 64.40. No fee award based on RCW 64.40 should be allowed and it was error to do so.

Further, *Brooklyn Welding Corp. v. Chin*, 236 A.D.2d 392

(N.Y. 1997) does not apply, as Puyallup claims. *Response* at 92:

It is well settled that a motion for leave to renew must be supported by new or additional facts which, although in existence at the time of a prior motion, were not known to the party seeking renewal, and, consequently, not made known to the court." Here, the key fact that was not known to anyone at the time the first judgment was entered in 2013

was that Doris Mathews, against whom the judgment had been entered, was dead.

Here, Ms Mathews death *was known*, and was the purported basis for vacating the original RCW 64.40 SJ by court's Order of July 2015. CP 3409-3421. Thus the death is not a "new or additional fact" that justifies Puyallup's motion to "clarify" which was granted by the April 15, 2016 Order (and companion amending Order of May 20, 2016, CP 7528-7529).

III. CONCLUSION

This Appeals Court should (1) grant the appeal, (2) revise and strengthen the 2008 Court Order to find as a matter of law Puyallup breached its duties to provide water service to Petitioners, (3) reverse the Court's 2013 Order dismissing RCW 64.40, Declaratory Judgment and tort claims, (4) remand for trial on damages and attorney fees owed to Petitioners, (5) reverse the CR 11 Order for Sanctions, and (6) reverse the April and May 2016 Orders awarding fees and costs and (7) vacate the 2016 Judgements.

DATED this 28th day of February 2017.

GOODSTEIN LAW GROUP PLLC
By: Carolyn A. Lake .
Carolyn A. Lake, WSBA #13980
Attorneys for Petitioners Spice &
Plexus

DECLARATION OF COUNSEL

1. I am legal counsel for the Appellants and have been for all times relevant.
2. A true and correct cop of the Docket from the Trial Court below is attached hereto as Exhibit A.
3. The issues in the LUPA I Appeals Court case were nothing alike those here. In LUPA I, the issue on appeal was whether the Superior Court had jurisdiction after Petitioners filed a CR 41 voluntary dismissal, as opposed to the LUPA, tort, RCW 64.40, CR 11 and declaratory judgement issues on appeal here.
4. In the LUPA I, Appellants contended the superior court lacked jurisdiction, while Puyallup argued the Court retained jurisdiction and could transform a voluntary CR 41 to a dismissal with Prejudice. The Appeals Court agreed with Appellants that the Court lacked jurisdiction after the CR 41 dismissal was filed, but strangely awarded attorney fees and costs against Petitioners.
5. Puyallup is aware that (1) the Supreme Court granted Appellants' Petition for Review of that Decision and (2) Appellants were never required to pay those attorney fees and costs, because Puyallup and Pierce County agreed to not purse fees as part of Petitioners' agreement to withdraw their Petition for Review, after Appellants' Petition for Review was granted.
6. See true and correct copies of attached **Exhibits B** (signed Settlement) and **Exhibit C** (Supreme Court Order in No. 83151-3), accepting Petition for Review, for which the

Court may take judicial notice.

7. Also attached are selected excerpts from the Clerk's Papers, all attached sequentially in the attached **Appendix of Clerks Papers.**

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 28 day of February 2016 at Tacoma Washington.

By: Carolyn A. Lake.

Carolyn A. Lake, WSBA #13980
Attorneys for Petitioners Spice &
Plexus





































Pierce County Superior Court Civil Case 07-2-11635-0**Purchase Copies**








Case Title: TED SPICE VS. PIERCE COUNTY
Case Type: Administrative Law Review
Access: Public
Track Assignment: Non PCLR
Jury Size:
Estimated Trial Length:
Dept Judge: **06 JACK NEVIN**
Resolution: 07/20/2015 Dismissal Without Trial
Completion: 07/20/2015 Judgment/Order/Decree Filed

Litigants		
Name	Type	Status
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Attorneys for SPICE, TED	Type	Bar Number
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PLEXUS DEVELOPMENT LLC	Petitioner	
Attorneys for PLEXUS DEVELOPMENT LLC	Type	Bar Number
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<u>CAROLYN A. LAKE</u>	Atty for Plaintiff/Petitioner	13980
MATHEWS, DORIS E	Petitioner	
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<u>MICHAEL CHARLES WALTER</u>	Atty for Respondent	15044
<u>Kevin John Yamamoto</u>	Atty for Respondent	26787
<u>Joseph N Beck</u>	Atty for Respondent	26789

Exhibit A

Filing Date	Filing	Access	Pages
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08/29/2007	FILING FEE RECEIVED \$200.00	
08/29/2007	 <u>CASE INFORMATION COVER SHEET</u>	1
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12/11/2007	 <u>BRIEF OF RESPONDENT ON RALJ</u>	2

12/11/2007	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
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01/04/2008	 <u>AFFIDAVIT/DECLARATION IN SUPPORT</u>	3
01/04/2008	 <u>BRIEF OF RESPONDENT ON RALJ</u>	10
01/04/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/07/2008	 <u>BRIEF IN RESPONSE/REPLY</u>	76
01/08/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/08/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/09/2008	 <u>OBJECTIONS/OPPOSITION</u>	14
01/09/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/11/2008	 <u>ORDER DIRECTING ADDITIONAL BRIEFING</u>	2
01/18/2008	 <u>BRIEF</u>	7
01/18/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/18/2008	 <u>BRIEF AND REPLY BRIEF</u>	76
01/25/2008	 <u>CLERK'S MINUTE ENTRY</u>	2
03/13/2008	 <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
03/13/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
03/13/2008	 <u>AFFIDAVIT/DECLARATION OF COUNSEL</u>	18
03/19/2008	 <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
03/19/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
03/24/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	6
04/02/2008	 <u>LETTER FROM DEPARTMENT 4</u>	2
09/04/2008	 <u>NOTE OF ISSUE</u>	2
09/04/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
09/10/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
09/10/2008	 <u>AFFIDAVIT/DECLARATION OF COUNSEL</u>	15
09/11/2008	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
09/11/2008	 <u>OBJECTIONS/OPPOSITION</u>	3
09/12/2008	 <u>ORDER OF REMAND</u>	4
04/03/2012	 <u>NOTICE OF ABSENCE/UNAVAILABILITY</u>	3
11/28/2012	 <u>NOTICE OF ABSENCE/UNAVAILABILITY</u>	3

































02/27/2013	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
02/27/2013	<u>e</u> <u>NOTICE OF ASSOCIATION OF COUNSEL</u>	2
03/04/2013	<u>COPIES OF EMAILS</u>	3
03/05/2013	<u>e</u> <u>NOTICE OF ABSENCE/UNAVAILABILITY</u>	1
03/05/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
03/08/2013	<u>ORDER SETTING ORIGINAL CASE SCHEDULE</u>	2
03/12/2013	<u>e</u> <u>NOTICE OF WITHDRAWAL AND SUB OF COUNSEL</u>	4
03/20/2013	<u>e</u> <u>OPPOSITION TO PETITIONERS' NOTE FOR TRIAL SETTING</u>	22
03/20/2013	<u>e</u> <u>DECLARATION OF KEVIN YAMAMOTO</u>	17
03/20/2013	<u>e</u> <u>DECLARATION OF MICHAEL C. WALTER</u>	101
03/21/2013	<u>e</u> <u>MOTION TO STRIKE</u>	3
03/21/2013	<u>REASSIGNED TO DEPT 6</u>	1
03/22/2013	<u>ORDER SETTING ORIGINAL CASE SCHEDULE</u>	2
03/22/2013	<u>CLERK'S MINUTE ENTRY</u>	2
03/22/2013	<u>REASSIGNED TO DEPT 17 *MOTION ONLY*</u>	1
03/27/2013	<u>e</u> <u>NOTICE OF ASSOCIATION OF COUNSEL</u>	3
03/27/2013	<u>e</u> <u>ANSWER</u>	8
03/28/2013	<u>e</u> <u>ANSWER OF RESP PC</u>	6
03/28/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
03/29/2013	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
03/29/2013	<u>e</u> <u>MOTION FOR SUMMARY JUDGMENT</u>	45
03/29/2013	<u>e</u> <u>DECLARATION OF KEVIN YAMAMOTO</u>	18
03/29/2013	<u>e</u> <u>DECLARATION OF MICHAEL WALTER</u>	101
04/03/2013	<u>e</u> <u>NOTE OF ISSUE</u>	2
04/03/2013	<u>e</u> <u>MOTION TO CONTINUE SUMMARY JUDGMENT HEARING DATE</u>	100
04/03/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
04/08/2013	<u>e</u> <u>DECLARATION OF MICHAEL C WALTER</u>	11
04/12/2013	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
04/12/2013	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
04/12/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
04/12/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
05/20/2013	<u>e</u> <u>REPLY OPPOSING SUMMARY JUDGMENT</u>	204
05/20/2013	<u>e</u> <u>DECLARATION OF TED SPICE</u>	3
05/20/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
05/20/2013	<u>e</u> <u>DECLARATION OF ETHAN OFFENBECHER</u>	12
05/23/2013	<u>ORDER OF DISMISSAL *PARTIAL*</u>	4
05/28/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2

05/28/2013	<u>e</u> <u>REPLY</u>	46
05/28/2013	<u>e</u> <u>CITY'S OBJECTION TO INADMISSIBLE EVIDENCE</u>	26
05/28/2013	<u>e</u> <u>DECLARATION OF KEVIN YAMAMOTO</u>	8
05/28/2013	<u>e</u> <u>SUPPLEMENTAL DECLARATION OF MICHAEL C. WALTER</u>	67
05/31/2013	<u>e</u> <u>CLERK'S MINUTE ENTRY</u>	2
05/31/2013	<u>e</u> <u>REPLY IN OPPOSITION</u>	24
05/31/2013	<u>e</u> <u>REPLY IN OPPOSITION</u>	17
05/31/2013	<u>e</u> <u>DECLARATION OF TED SPICE</u>	2
05/31/2013	<u>e</u> <u>REPLY OPPOSING SUMMARY JUDGMENT</u>	36
05/31/2013	<u>e</u> <u>REPLY OPPOSING MOTION TO STRIKE</u>	20
05/31/2013	<u>e</u> <u>SECOND DECLARATION OF TED SPICE</u>	3
05/31/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
06/12/2013	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
06/12/2013	<u>e</u> <u>MOTION FOR PRESENTATION</u>	10
06/19/2013	<u>e</u> <u>RESPONSE</u>	28
06/19/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
06/19/2013	<u>e</u> <u>RESPONSE TO MOTION</u>	28
06/19/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
06/20/2013	<u>e</u> <u>REPLY</u>	34
06/21/2013	<u>e</u> <u>CLERK'S MINUTE ENTRY</u>	2
06/21/2013	<u>e</u> <u>*VOID* ORDER GRANTING SUMMARY JUDGMENT & DISMISSING CASE</u>	5
07/01/2013	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
07/01/2013	<u>e</u> <u>DECLARATION OF KEVIN YAMAMOTO</u>	20
07/01/2013	<u>e</u> <u>DECLARATION OF MICHAEL C. WALTER</u>	142
07/01/2013	<u>e</u> <u>CITY'S MOTION FOR DETERMINATION OF ATTORNEYS' FEES</u>	38
07/01/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
07/01/2013	<u>e</u> <u>MOTION FOR RECONSIDERATION</u>	98
07/02/2013	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
07/02/2013	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
07/03/2013	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
07/30/2013	<u>e</u> <u>NOTICE OF INTENT TO WITHDRAW</u>	2
08/07/2013	<u>e</u> <u>RESPONSE IN OPPOSITION</u>	18
08/07/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
08/07/2013	<u>e</u> <u>OBJECTIONS/OPPOSITION</u>	51
08/08/2013	<u>e</u> <u>REPLY IN SUPPORT OF RECONSIDERATION</u>	58
08/08/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2

08/08/2013	<u>e</u> <u>CITY'S REPLY RE: MOTION FOR ATTORNEYS FEES</u>	26
08/09/2013	<u>CLERK'S MINUTE ENTRY</u>	2
08/14/2013	<u>e</u> <u>PETITIONERS' SUPPLEMENTAL RESPONSE</u>	61
08/14/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
08/16/2013	<u>e</u> <u>CITY'S OBJECTION TO PETITIONERS' SUPPLEMENTAL RESP</u>	6
08/21/2013	<u>LETTER FROM DEPARTMENT 6</u>	1
09/10/2013	<u>ORDER ON MOTION FOR RECONSIDERATION</u>	1
09/24/2013	<u>COURT'S DECISION</u>	3
10/10/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
10/10/2013	<u>e</u> <u>NOTICE OF APPEAL WITH FEE</u>	13
10/16/2013	<u>e</u> <u>TRANSMITTAL LETTER COPY FILED</u>	1
11/12/2013	<u>e</u> <u>DESIGNATION OF CLERK'S PAPERS</u>	3
11/12/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
11/14/2013	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
11/14/2013	<u>e</u> <u>MOTION FOR PRESENTATION</u>	30
11/14/2013	<u>e</u> <u>DECLARATION OF MICHAEL C. WALTER</u>	79
11/21/2013	<u>e</u> <u>RESPONSE IN OPPOSITION</u>	127
11/21/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
11/22/2013	<u>e</u> <u>REPLY</u>	26
11/22/2013	<u>CLERK'S PAPERS PREPARED</u>	5
12/13/2013	<u>ORDER GRANTING FEES AND COSTS</u>	17
12/13/2013	<u>JUDGMENT *VOID*</u>	2
12/18/2013	<u>e</u> <u>DESIGNATION OF CLERK'S PAPERS</u>	5
12/27/2013	<u>CLERK'S PAPERS PREPARED</u>	5
12/30/2013	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
12/30/2013	<u>e</u> <u>SECOND NOTICE OF APPEAL</u>	21
01/06/2014	<u>e</u> <u>CLERK'S PAPERS SENT</u>	1
01/06/2014	<u>e</u> <u>TRANSMITTAL LETTER COPY FILED</u>	1
01/21/2014	<u>e</u> <u>CLERK'S PAPERS SENT</u>	1
10/09/2014	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
10/09/2014	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
10/09/2014	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
10/09/2014	<u>e</u> <u>CITY OF PUYALLUP'S MOTION TO VACATE</u>	24
10/09/2014	<u>e</u> <u>DECLARATION OF DONNA DUBOIS</u>	58
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10/09/2014	<u>e</u> <u>MOTION FOR SUMMARY JUDGMENT</u>	22
10/09/2014	<u>e</u> <u>CITY OF PUYALLUP'S MOTION FOR CR11 FEES</u>	44

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10/09/2014	<u>e</u> DECLARATION OF KEVIN YAMAMOTO	28
10/09/2014	<u>e</u> DECLARATION OF MICHAEL WALTER RE CR11 FEES	159
10/09/2014	<u>u</u> COPY OF RULING FROM COA	2
10/27/2014	<u>u</u> NOTE FOR JUDGES MOTION CALENDAR	2
10/27/2014	<u>u</u> MOTION FOR OVERLENGTH RESPONSE	2
10/27/2014	<u>u</u> RESPONSE IN OPPOSITION	207
10/27/2014	<u>u</u> AFFIDAVIT/DECLARATION OF SERVICE	2
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11/03/2014	<u>e</u> NOTE FOR JUDGES MOTION CALENDAR	2
11/03/2014	<u>e</u> NOTE FOR JUDGES MOTION CALENDAR	2
11/03/2014	<u>e</u> REPLY TO RESPONSE	13
11/03/2014	<u>e</u> SECOND DECLARATION OF DONNA DUBOIS	21
11/04/2014	<u>e</u> NOTE FOR JUDGES MOTION CALENDAR	2
11/06/2014	<u>e</u> OPPOSITION TO DEFENDANTS' MOTION FOR CR 11	141
11/06/2014	<u>e</u> DECLARATION OF STEPHEN M. HANSEN	79
11/06/2014	<u>e</u> THIRD DECLARATION OF PETITIONER	4
11/06/2014	<u>e</u> AFFIDAVIT/DECLARATION OF SERVICE	2
11/07/2014	<u>e</u> ERRATA AFFIDAVIT/DECLARATION OF PETITIONER	15
11/07/2014	<u>e</u> AFFIDAVIT/DECLARATION OF SERVICE	2
11/07/2014	<u>e</u> DECLARATION OF LEGAL COUNSEL OPPOSING CR 11	12
11/07/2014	<u>e</u> RESPONSE OF PETITIONER OPPOSING MOTION TO VACATE	10
11/07/2014	<u>e</u> AFFIDAVIT/DECLARATION OF SERVICE	2
11/10/2014	<u>e</u> COMBINED REPLY TO MOTIONS FOR CR11 AND VACATE	11
11/18/2014	<u>e</u> NOTE FOR JUDGES MOTION CALENDAR	2
11/18/2014	<u>e</u> NOTE FOR JUDGES MOTION CALENDAR	2
11/18/2014	<u>e</u> NOTE FOR JUDGES MOTION CALENDAR	2
11/18/2014	<u>e</u> NOTE FOR JUDGES MOTION CALENDAR	2
12/12/2014	<u>e</u> NOTICE OF ABSENCE/UNAVAILABILITY	3
12/22/2014	<u>e</u> SUPPLEMENTAL DECLARATION OF MICHAEL C. WALTER	43
12/29/2014	<u>e</u> NOTE FOR JUDGES MOTION CALENDAR	2
12/29/2014	<u>e</u> PETITIONERS' MOTION TO STRIKE & OBJECTION	8



































12/29/2014	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/07/2015	<u>e</u> <u>OBJECTIONS/OPPOSITION</u>	10
01/07/2015	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/07/2015	<u>e</u> <u>RESPONSE IN OPPOSITION</u>	11
01/07/2015	<u>e</u> <u>DECLARATION OF KIMBERLY WALDBAUM</u>	3
01/08/2015	<u>e</u> <u>PETITIONERS' REPLY IN SUPPORT</u>	4
01/08/2015	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/09/2015	<u>e</u> <u>ORDER SETTING ORIGINAL CASE SCHEDULE</u>	2
01/09/2015	<u>e</u> <u>CLERK'S MINUTE ENTRY</u>	3
01/09/2015	<u>e</u> <u>CLERK'S MINUTE ENTRY</u>	3
01/09/2015	<u>e</u> <u>CLERK'S MINUTE ENTRY</u>	3
01/09/2015	<u>e</u> <u>CLERK'S MINUTE ENTRY</u>	3
01/22/2015	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
01/22/2015	<u>e</u> <u>MOTION TO STAY ALL PROCEEDINGS</u>	14
01/22/2015	<u>e</u> <u>DECLARATION OF MICHAEL C. WALTER</u>	94
01/28/2015	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/28/2015	<u>e</u> <u>RESPONSE OPPOSING MOTION FOR STAY</u>	18
01/28/2015	<u>e</u> <u>DECLARATION OF TED SPICE</u>	4
01/29/2015	<u>e</u> <u>NOTICE STRIKING MOTION TO STAY</u>	3
01/30/2015	<u>e</u> <u>RESPONSE TO MOTION</u>	2
02/26/2015	<u>e</u> <u>NOTICE OF APPEARANCE</u>	1
02/27/2015	<u>e</u> <u>ORDER SETTING ORIGINAL CASE SCHEDULE</u>	2
03/02/2015	<u>e</u> <u>NOTICE OF ABSENCE/UNAVAILABILITY</u>	2
03/04/2015	<u>e</u> <u>NOTICE OF ABSENCE/UNAVAILABILITY</u>	1
03/04/2015	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
03/27/2015	<u>e</u> <u>NOTICE OF ABSENCE/UNAVAILABILITY</u>	3
04/23/2015	ABSTRACT ISSUED TO LEWIS COUNTY SUPERIOR COURT	
05/20/2015	EX PARTE PRESENTATION FEE \$40.00	0
05/20/2015	<u>e</u> <u>MOTION FOR BREAK AND ENTER ORDER</u>	2
05/20/2015	<u>e</u> <u>ORDER OF DEFICIENCIES</u>	1
05/22/2015	<u>e</u> <u>PRAECIPE W/FEE</u>	2
05/22/2015	<u>e</u> <u>WRIT OF EXECUTION ON PERSONAL PROPERTY</u>	3
05/22/2015	<u>e</u> <u>MOTION FOR BREAK AND ENTER ORDER</u>	2
05/22/2015	<u>e</u> <u>ORDER RE: BREAK AND ENTER</u>	2
05/28/2015	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
05/28/2015	<u>e</u> <u>NOTICE OF ISSUE "SPECIAL SET"</u>	2
05/28/2015	<u>e</u> <u>PETITIONERS' MOTION FOR ORDER QUASHING WRIT</u>	48















05/28/2015	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
05/28/2015	 <u>PC SHERIFF'S MOTION FOR COURT INSTRUCTION</u>	17
06/01/2015	 <u>DECLARATION OF SERVICE</u>	2
06/03/2015	 <u>AMENDED DECLARATION OF SERVICE</u>	2
06/03/2015	 <u>CITY OF PUYALLUP'S RESPONSE IN OPPOSITION</u>	17
06/03/2015	 <u>STATEMENT OF REQUESTED RELIEF</u>	13
06/03/2015	 <u>RESPONSE ON MOTION TO DISMISS</u>	26
06/04/2015	 <u>PETITIONER'S RESPONSE RE: CONTINUATION</u>	11
06/04/2015	 <u>PETITIONERS REPLY IN SUPPORT OF MOTION TO QUASH</u>	6
06/04/2015	 <u>AFFIDAVIT/DECLARATION OF COUNSEL IN SUPPORT</u>	7
06/04/2015	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
06/05/2015	 <u>CLERK'S MINUTE ENTRY</u>	3
06/05/2015	 <u>CLERK'S MINUTE ENTRY</u>	3
06/05/2015	 <u>CLERK'S MINUTE ENTRY</u>	3
06/05/2015	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
06/08/2015	 <u>DECLARATION OF COUNSEL W/PROPOSED FINDINGS OF FACT</u>	34
06/08/2015	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
06/11/2015	 <u>DECLARATION OF COUNSEL RE COA EMERGENCY MOTION</u>	26
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06/11/2015	 <u>DECLARATION OF COUNSEL RE NOTICE OF COA RULING</u>	2
06/11/2015	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
06/12/2015	 <u>WRIT OF EXECUTION ON PERSONAL PROPERTY *CANCELLED*</u>	4
06/15/2015	 <u>NOTICE OF APPEARANCE</u>	2
07/02/2015	 <u>COPY OF RULING FROM COA</u>	1
07/06/2015	 <u>ORDER SETTING ORIGINAL CASE SCHEDULE</u>	2
07/17/2015	 <u>DECLARATION OF CAROLYN LAKE</u>	20
07/17/2015	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	3
07/20/2015	 <u>ORDER SETTING ORIGINAL CASE SCHEDULE</u>	2
07/20/2015	 <u>ORDER OF DISMISSAL WITH PREJUDICE / ALL DECISIONS, ORDERS AND JUDGMENTS ARE VOID AB INITIO</u>	13
07/22/2015	 <u>DECLARATION OF LEGAL COUNSEL</u>	138
07/22/2015	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	3
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08/17/2015	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
08/17/2015	<u>e</u> <u>NOTICE OF APPEAL</u>	2
08/17/2015	<u>e</u> <u>NOTICE OF APPEAL. ERRATA</u>	15
08/18/2015	<u>e</u> <u>TRANSMITTAL LETTER COPY FILED</u>	1
08/24/2015	<u>e</u> <u>PERFECTION NOTICE FROM COURT OF APPEALS</u>	2
08/31/2015	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
08/31/2015	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
08/31/2015	<u>e</u> <u>MOTION FOR ATTORNEY FEES & COSTS</u>	36
08/31/2015	<u>e</u> <u>DECLARATION MICHAEL C. WALTER</u>	357
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08/31/2015	<u>e</u> <u>MOTION TO FILE OVER-LENGTH RENEWED CR 11 MOTION</u>	6
09/10/2015	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
09/10/2015	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
09/11/2015	<u>e</u> <u>NOTICE OF SUBSTITUTION OF COUNSEL</u>	1
09/14/2015	<u>e</u> <u>DESIGNATION OF CLERK'S PAPERS</u>	3
09/14/2015	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
09/17/2015	<u>e</u> <u>DECLARATION OF JOHN A STRAIT</u>	21
09/17/2015	<u>e</u> <u>PLAINTIFFS RESPONSE OPPOSING CR 11</u>	32
09/17/2015	<u>e</u> <u>DECLARATION OF CAROLYN LAKE</u>	133
09/17/2015	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
09/17/2015	<u>e</u> <u>MEMORANDUM IN OPPOSITION</u>	16
09/17/2015	<u>e</u> <u>DECLARATION OF STEPHEN HANSEN</u>	12
09/17/2015	<u>e</u> <u>DECLARATION OF BRIAN KRIKORIAN</u>	23
09/23/2015	<u>e</u> <u>CLERK'S PAPERS PREPARED</u>	5
09/24/2015	<u>e</u> <u>MOTION FOR OVER-LENGTH REPLY</u>	5
09/24/2015	<u>e</u> <u>REPLY IN SUPPORT OF CITY'S MOTION FOR CR 11 FEES</u>	18
09/24/2015	<u>e</u> <u>DECLARATION OF MICHAEL C. WALTER</u>	41
09/25/2015	<u>e</u> <u>CLERK'S MINUTE ENTRY</u>	2
09/29/2015	<u>e</u> <u>MEMORANDUM OF AUTHORITIES</u>	6
09/30/2015	<u>e</u> <u>CITY'S STATEMENT OF SUPPLEMENTAL AUTHORITIES</u>	8
10/01/2015	<u>e</u> <u>NOTICE OF ABSENCE/UNAVAILABILITY</u>	3
10/09/2015	<u>e</u> <u>PETITIONER SPICE & PLEXUSSUPRESPONSEOPPOSING CR 11</u>	71
10/09/2015	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
10/16/2015	<u>e</u> <u>DESIGNATION OF CLERK'S PAPERS</u>	5
10/19/2015	<u>e</u> <u>CLERK'S PAPERS PREPARED</u>	4

10/23/2015	<u>e</u> <u>CLERK'S PAPERS SENT</u>	1
10/30/2015	<u>u</u> <u>REQUEST FOR COPIES OF CLERK'S PAPERS</u>	1
11/19/2015	<u>e</u> <u>CLERK'S PAPERS SENT</u>	1
12/04/2015	<u>u</u> <u>ORDER SETTING ORIGINAL CASE SCHEDULE</u>	2
12/11/2015	<u>u</u> <u>CLERK'S MINUTE ENTRY</u>	4
12/11/2015	<u>e</u> <u>NOTICE OF APPEARANCE</u>	1
12/11/2015	<u>e</u> <u>MOTION TO SHORTEN TIME</u>	6
12/11/2015	<u>e</u> <u>MOTION TO REOPEN PROCEEDINGS FOR ADDITIONAL DISCOV</u>	14
12/11/2015	<u>e</u> <u>DECLARATION OF TED SPICE IN SUPPORT OF MOTION TO R</u>	8
12/17/2015	<u>e</u> <u>NOTICE OF ABSENCE/UNAVAILABILITY</u>	2
12/17/2015	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
12/30/2015	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
12/30/2015	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
12/30/2015	<u>e</u> <u>DECLARATION OF C. TYLER SHILLITO</u>	3
12/30/2015	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
12/31/2015	<u>e</u> <u>MOTION FOR RULING ON CONTINUED REPRESENTATION</u>	7
01/08/2016	<u>e</u> <u>RESPONSE TO MOTION TO CONTINUE</u>	4
01/12/2016	<u>e</u> <u>RESPONSE TO MOTION TO CONTINUE REPRESENTATION</u>	1
01/12/2016	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/13/2016	<u>e</u> <u>RESPONSE TO MOTION FOR CONTINUED REPRESENTATION</u>	3
01/13/2016	<u>e</u> <u>RESPONSE IN OPPOSITION TO MOTION TO REOPEN</u>	13
01/13/2016	<u>e</u> <u>DECLARATION OF MICHAEL C. WALTER W/EXHIBITS A-E</u>	94
01/14/2016	<u>e</u> <u>OBJECTIONS/OPPOSITION</u>	18
01/14/2016	<u>e</u> <u>REPLY</u>	5
01/14/2016	<u>e</u> <u>REPLY</u>	1
01/14/2016	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/14/2016	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	1
01/15/2016	<u>u</u> <u>CLERK'S MINUTE ENTRY</u>	4
01/15/2016	<u>u</u> <u>ORDER RE: CONTINUED REPRESENTATION / MOTION TO REOPEN</u>	3
01/27/2016	<u>e</u> <u>NOTICE OF ABSENCE/UNAVAILABILITY</u>	2
01/27/2016	<u>e</u> <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
01/28/2016	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2
01/28/2016	<u>e</u> <u>NOTE FOR JUDGES MOTION CALENDAR</u>	2

01/28/2016	<u>e NOTICE OF ABSENCE/UNAVAILABILITY</u>	3
01/28/2016	<u>e AMENDED NOTICE OF ABSENCE/UNAVAILABILITY</u>	4
01/28/2016	<u>e MOTION FOR PRESENTATION AND ENTRY</u>	35
01/28/2016	<u>e AFFIDAVIT/DECLARATION OF COUNSEL IN SUPPORT</u>	93
01/28/2016	<u>e MOTION TO AMEND ORDERS</u>	13
01/28/2016	<u>e AFFIDAVIT/DECLARATION OF COUNSEL WALTER</u>	614
02/04/2016	<u>e NOTICE OF ABSENCE/UNAVAILABILITY</u>	2
02/04/2016	<u>e AFFIDAVIT/DECLARATION OF SERVICE</u>	2
02/08/2016	<u>e NOTICE OF ABSENCE/UNAVAILABILITY</u>	2
02/08/2016	<u>e AFFIDAVIT/DECLARATION OF SERVICE</u>	2
02/10/2016	<u>e NOTE FOR JUDGES MOTION CALENDAR</u>	2
02/10/2016	<u>e OBJECTION TO IRREGULAR SERVICES</u>	46
02/10/2016	<u>e AFFIDAVIT/DECLARATION OF SERVICE</u>	2
02/11/2016	<u>e DECLARATION OF DICK KILPATRICK</u>	6
02/11/2016	<u>e AFFIDAVIT/DECLARATION OF SERVICE *CORRECTED*</u>	2
02/16/2016	<u>e NOTE FOR JUDGES MOTION CALENDAR</u>	2
02/16/2016	<u>e NOTE FOR JUDGES MOTION CALENDAR</u>	2
02/16/2016	<u>e MOTION TO AMEND</u>	13
02/16/2016	<u>e DECLARATION OF MICHAEL C. WALTER</u>	613
02/16/2016	<u>e MOTION FOR PRESENTATION</u>	34
02/16/2016	<u>e DECLARATION OF MICHAEL C. WALTER</u>	92
03/08/2016	<u>e AFFIDAVIT/DECLARATION OF COUNSEL</u>	18
03/08/2016	<u>e AFFIDAVIT/DECLARATION OF COUNSEL</u>	18
03/08/2016	<u>e AFFIDAVIT/DECLARATION OF SERVICE</u>	2
03/22/2016	<u>e SPICE RESPONSE OPPOSING THE CITY'S MOTION TO AMEND</u>	4
03/22/2016	<u>e RESPONSE OPPOSING PUYALLUP MOTION TO AMEND</u>	198
03/22/2016	<u>e AFFIDAVIT/DECLARATION OF SERVICE</u>	2
03/22/2016	<u>e OBJECTIONS/OPPOSITION TO ENTRY OF ORDER</u>	13
03/22/2016	<u>e AFFIDAVIT/DECLARATION OF COUNSEL KILPATRICK</u>	16
03/22/2016	<u>e HANSEN'S OBJECTIONS/OPPOSITION TO ATTEMPT</u>	18
03/23/2016	<u>e RESPONSE OPPOSING PUYALLUP ORDER</u>	60
03/23/2016	<u>e RESPONSE OPPOSING PUYALLUP ORDER. ERRATA</u>	61
03/23/2016	<u>e AFFIDAVIT/DECLARATION OF SERVICE</u>	2

03/23/2016	<u> AFFIDAVIT/DECLARATION OF SERVICE</u>	2
03/28/2016	<u> NOTE FOR JUDGES MOTION CALENDAR</u>	2
03/28/2016	<u> MOTION FOR PRESENTATION</u>	7
03/29/2016	<u> REPLY RE: MOTION FOR PRESENTATION</u>	50
03/29/2016	<u> REPLY RE 64.40 JUDGMENT</u>	98
04/14/2016	<u> NOTICE OF WITHDRAWAL AND SUB OF COUNSEL</u>	3
04/15/2016	<u> CLERK'S MINUTE ENTRY</u>	2
04/15/2016	<u> CLERK'S MINUTE ENTRY</u>	2
04/15/2016	<u> CLERK'S MINUTE ENTRY</u>	2
04/15/2016	<u> AFFIDAVIT/DECLARATION OF SERVICE</u>	2
04/15/2016	<u> ORDER GRANTING SANCTIONS AGAINST ATTORNEY</u>	20
04/15/2016	<u> ORDER GRANTING REASONABLE ATTONEYS FEES</u>	22
04/15/2016	<u> FOURTH NOTICE OF APPEAL WITH FEE</u>	44
04/19/2016	<u> TRANSMITTAL LETTER COPY FILED</u>	1
04/21/2016	<u> NOTE FOR JUDGES MOTION CALENDAR</u>	2
04/21/2016	<u> MOTION FOR PRESENTATION</u>	19
04/27/2016	<u> DEC OF COUNSEL RE APPEALS COURT STAY LIFTED</u>	2
04/27/2016	<u> AFFIDAVIT/DECLARATION OF SERVICE</u>	2
05/20/2016	<u> DESIGNATION OF CLERK'S PAPERS</u>	4
05/20/2016	<u> AFFIDAVIT/DECLARATION OF SERVICE</u>	2
05/20/2016	<u> DESIGNATION OF CLERK'S PAPERS</u>	5
05/20/2016	<u> DECLARATION OF MICHAEL C. WALTER W/EXHS. A-C</u>	22
05/20/2016	<u> COPIES OF EMAILS</u>	4
05/20/2016	<u> JUDGMENT ON CR 11 SANCTION AWARD</u>	2
05/20/2016	<u> JUDGMENT *FINAL*</u>	2
05/20/2016	<u> ORDER AMENDING ORDER OF APRIL 15, 2016</u>	2
05/24/2016	<u> APPELLANTS 4TH SUPP DESIGNATION OF CLERK'S PAPERS</u>	2
05/24/2016	<u> AFFIDAVIT/DECLARATION OF SERVICE</u>	2
05/24/2016	<u> AFFIDAVIT/DECLARATION OF SERVICE</u>	2
05/24/2016	<u> NOTICE OF APPEAL</u>	9
05/26/2016	<u> FOURTH SUPP DESIGNATION OF CLERK'S PAPERS</u>	4
05/26/2016	<u> TRANSMITTAL LETTER COPY FILED</u>	1
06/03/2016	<u> CLERK'S PAPERS PREPARED</u>	5
06/03/2016	<u> NOTICE OF FILING CASH DEPOSIT AS SUPERCEDEAS</u>	25

06/03/2016	 <u>REQUEST FOR INVESTMENT</u>	1
06/03/2016	 <u>AFFIDAVIT/DECLARATION OF SERVICE</u>	2
06/06/2016	 <u>CLERK'S PAPERS PREPARED</u>	5
06/08/2016	 <u>CLERK'S PAPERS PREPARED</u>	2
06/08/2016	 <u>CLERK'S PAPERS SENT</u>	1
06/10/2016	 <u>CLERK'S PAPERS SENT</u>	1
06/13/2016	 <u>CLERK'S PAPERS PREPARED</u>	2
06/20/2016	 <u>NOTICE OF ABSENCE/UNAVAILABILITY</u>	2
07/13/2016	 <u>CLERK'S PAPERS SENT</u>	1
07/14/2016	 <u>AFFIDAVIT FOR GARNISHMENT</u>	2
07/14/2016	 <u>WRIT OF GARNISHMENT(WITH FEE)</u>	3
07/18/2016	 <u>ANSWER TO WRIT OF GARNISHMENT</u>	3
07/18/2016	 <u>CLERK'S PAPERS SENT</u>	1
08/08/2016	 <u>REQUEST FOR COPIES OF CLERK'S PAPERS</u>	

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON



11/9 filed postal

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November 5, 2009

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Tacoma, WA 98402-2160

Re: Supreme Court No. 83151-3 - Ted Spice, et al. v. Pierce County, et al.
Court of Appeals No. 37281-9-II

Counsel:

Enclosed is a conformed copy of the Order entered this day following hearing of the above matter on the Court's November 5, 2009, En Banc Conference.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:daf

Enclosure as referenced

Exhibit B

THE SUPREME COURT OF WASHINGTON

TED SPICE and PLEXUX DEVELOPMENT,
LLC,

Petitioners,

v.

PIERCE COUNTY, a political subdivision, and
CITY OF PUYALLUP, a municipal
corporation,

Respondents.

NO. 83151-3

ORDER

C/A NO. 37281-9-II

This matter came before the Court on its, November 5, 2009, En Banc Conference. The Court considered the Petition and the files herein. A majority of the Court voted in favor of the following result:

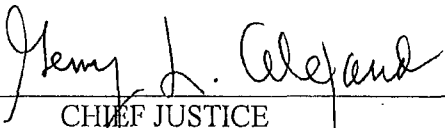
Now, therefore, it is hereby

ORDERED:

That the Petition for Review is granted.

DATED at Olympia, Washington this 6th day of November, 2009.

For the Court


CHIEF JUSTICE

571/124

STIPULATED SETTLEMENT

The parties hereto (Appellant Ted Spice & Plexus, Respondents City of Puyallup and Pierce County) stipulate to the following terms of settlement of Supreme Court Cause No. 83151-3 (Court of Appeals No. 37281-9).

1. Appellants' counsel shall deliver an executed stipulated Motion for dismissal voluntary withdrawal of review pursuant to RAP 18.2 to the City and County by the noon on June 30, 2010. The form shall be acceptable to the City and County.
2. Counsel for the County and City will execute the same and return it to Appellants' counsel with authorization to file the Motion with the Supreme Court.
3. Appellants counsel will file the above-identified stipulated Motion for dismissal with the Supreme Court by noon June 30, 2010 and request summary ruling.
4. Parties acknowledge that the Court of Appeals decision in 37281-9-II stands in its entirety, with the exception that despite the grant of attorney fees and costs by the Court of Appeals in *Spice v. Pierce County*, 149 Wash. App. 461 (2009), the County and the City will forgo the fee and cost award; and
5. Parties agree that each party will bear the fees and costs incurred by that party without an obligation to pay fees or costs to any other party.
6. All persons signing this stipulated Settlement have authority to do so on behalf of their clients.
7. This represents the full and complete agreement of the parties.

GOODSTEIN LAW GROUP PLLC

By: 

Carolyn A. Lake, WSBA #13980

Attorneys for Petitioners

June 30, 2010

CITY OF PUYALLUP

By: Kevin J. Yamamoto
Kevin Yamamoto, Assistant City Attorney
Attorney for respondent City WSPA No. 26787

DATED:

6-30-2010

PIERCE COUNTY WASHINGTON

By: D. St. Pierre
David St Pierre, Deputy Prosecuting
Attorney WSPA # 27890
Attorney for respondent County



Washington State Court of Appeals

Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4.

December 17, 2013

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Pierce County Ofc of Pro Atty - Civil
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kyamamoto@ci.puyallup.wa.us

CASE #: 45476-9-II

Ted Spice, et al, Appellants v. Pierce County & the City of Puyallup, Respondents

Counsel:

On the above date, this court entered the following notation ruling:

A RULING BY COMMISSIONER SCHMIDT:

The motion to dismiss Pierce County as a respondent is denied. The stipulation between Spice and Pierce County dismissed the "remaining and bifurcated claim for damages." It did not dismiss Spice's LUPA claims, which were apparently adjudicated in the 2008 order. As to the LUPA claims, Pierce County does not show that it should be dismissed as a respondent. The motion for sanctions is denied.

Very truly yours,

David C. Ponzoha
Court Clerk

Exhibit D

SPICE v. PUYALLUP, No. 45476-9-II

Appendix of Clerks Papers.

OFFICE OF THE HEARING EXAMINERPIERCE COUNTYREPORT AND DECISION

CASE NO.: Resolution of a Water Service Dispute involving Plexus Investments LLC and the City of Puyallup

APPLICANT: Plexus Investments LLC – Ted Spice
PO Box 2133
Sumner, WA 98390

SUMMARY OF REQUEST:

The Applicant requests the Pierce County Hearing Examiner to enter a ruling regarding a challenge to the City of Puyallup's ability to provide timely and reasonable water service to property located in unincorporated Pierce County, Council District 1, and within the exclusive water service area of the City of Puyallup as designated through the procedures of the Pierce County Coordinated Water System Plan, pursuant to the Public Water System Coordination Act (RCW 70.116).

SUMMARY OF DECISION

Request granted.

PUBLIC HEARING:

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on Thursday, March 10, 2005, at 9:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

EXHIBIT "1" - Public Works and Utilities Staff Report and Attachments
EXHIBIT "2" - Colored Maps

- EXHIBIT "3" - March 9, 2005, Letter to Examiner from Carolyn Lake
- EXHIBIT "4" - Mike Stazel Photographs of Fire Hydrant
- EXHIBIT "5" - Letter from Mike Stanzel (March 10, 2005) w/ attachments
- EXHIBIT "6" - Letter to Examiner from Carolyn Lake dated April 5, 2005
- EXHIBIT "7" - Letter to Examiner from Carolyn Lake dated April 27, 2005

Appearing was SUSAN CLARK who presented the Public Works and Utilities Staff Report. She submitted previous water dispute decisions and attached them to the staff report. She provided the background for this dispute. The Public Water System Coordination Act requires water systems to establish service areas. The City of Puyallup is the designated service area for this particular parcel. The applicant is required to obtain water service from the City of Puyallup. They are the exclusive provider. The City of Puyallup is required to offer timely and reasonable service to the applicant. The site is currently used in a residential capacity, but it is zoned for commercial use in the Employment Center zone classification. The applicant intends to redevelop the property and wants the City of Puyallup to continue to provide water to the site. The applicant requested water service from the City of Puyallup. On or about June, 2004, the applicant attended a pre-application meeting. He was eventually told in August that the City could not issue a water availability letter until his property was in the process of being annexed. There have not been enough signatures from property owners within the immediate area to proceed with annexation, thus the City would not issue a water availability letter. The Pierce County Coordinated Water System Plan defines "timely service" as receiving a commitment to provide service within 120 days of the request. Clearly more than 120 days have passed. The City of Puyallup has elected not to provide water. The applicant has requested approval to provide water by well. Staff recommends that the applicant be allowed to pursue other options for water service. Planning Staff is also asking that the Examiner rule that other applicants in the same position be allowed to pursue other options.

Appearing was CAROLYN LAKE, attorney for the applicant. She wants clarification on what exhibits have been put within the record. She outlined her legal argument. The City of Puyallup has executed a standard service area agreement whereby they are the exclusive provider of water within a particular area. The applicant is within this area. The City of Puyallup has chosen to be the exclusive provider even though this property is outside city limits. The City has a duty to provide reasonable and timely water service according to the Pierce County Coordinated Water System Plan. The City has 120 days from the date of application to provide the service. It is undisputed that the applicant's property is within the City of Puyallup's exclusive service area. The City of Puyallup is refusing to provide water to the site. The applicant has agreed to sign a no protest letter as it relates to annexation. This is not good enough for the City. The applicant does have problems with the requirement of the City of Puyallup that annexation be part of providing water service. This should not be a requirement because the applicant cannot do anything about other property owners in the vicinity. The City of Puyallup has also denied the applicant's request that a well be allowed to be put on the property. They have not

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consented to the creation of this well. The applicant has an issue with the dispute resolution process. The City of Puyallup has breached its duty. Any attempts by local ordinance to avoid the duty to provide water is barred by state law. The applicant is asking that the Examiner require the City of Puyallup to carry out its duty to provide water service to the applicant and/or revise Puyallup's water service area to delete the applicant's parcel and surrounding properties and/or allow the applicant to proceed with his plan to develop a Group A well water system.

Appearing was TED SPICE, applicant, who testified he is very upset at the City of Puyallup. He believes that they are holding him hostage regarding the water situation. The City of Puyallup is trying to require him to pay \$100,000 plus specific amounts per vehicle. It just doesn't seem fair.

Appearing was MIKE STANZEL who submitted Exhibits "4" and "5". He believes the City of Puyallup is misusing their power. Their denial of water service is "pure extortion". The City of Puyallup is requiring owners to do all kinds of things so that they can get water. They are essentially denying individuals the right to free speech. He believes that the City of Puyallup should be forced to serve the property owners that are within their exclusive service area.

Reappearing was SUSAN CLARK who reiterated that the County's position is that the Examiner should rule that the applicant and properties situated in the applicant's position be allowed to seek other available alternatives other than the City of Puyallup for water service.

Reappearing was CAROLYN LAKE who believes that the applicant's request should require the City of Puyallup to provide the service.

No one spoke further in this matter and the Examiner took the matter under advisement. The hearing was concluded at 10:15 a.m.

NOTE: A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, viewed the property, heard testimony, and taken this matter under advisement.
2. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. Notice of the date and time of hearing was published two (2) weeks

prior to the hearing in the official County newspaper.

3. In 1977 the Washington State Legislature adopted the Public Water System Coordination Act of 1977 which is presently codified in Chapter 70.116 RCW. The Act requires that service area boundaries be established by written agreement among the purveyors. Pursuant to this legislation, Pierce County adopted the Pierce County Coordinated Water System Plan (CWSP) which established water service boundaries within Pierce County. According to Section 1 of the CWSP, the objective is to assist water purveyors to effectively plan by establishing exclusive water service areas, thereby ensuring the most cost effective water supply service to all properties within the county.
4. The applicant has a possessory ownership interest in property located at 11003-11011 58th Street Court East (Parcel No. 7705000191). The site is currently improved with duplexes. The current zoning is Employment Center. The applicant is proposing to develop the property for commercial use which is the preferred use within the Employment Center zone.
5. It is undisputed that the City of Puyallup is the exclusive water provider for this particular parcel. The City of Puyallup submitted a Standard Service Area Agreement on August 29, 1994. This particular parcel is outside of the city limits of Puyallup, but is within the service area.
6. In June, 2004, the applicant submitted an application for water service to the City of Puyallup. In August, 2004, the applicant and the City of Puyallup's representatives attended a pre-application meeting to discuss the water request. On August 16, 2004, the City of Puyallup stated that it could not issue a water availability letter until this particular property was in the process of being annexed. Because the City had not received enough signatures from property owners within the area to proceed ahead with annexation, the City would not issue a water availability letter.
7. On September 16, 2004, the applicant requested approval from the Tacoma - Pierce County Health Department to drill a well on the parcel. The Health Department indicated that the well could not be developed because the City of Puyallup was the exclusive water provider for this area. Unless the City of Puyallup consented to water being provided via well, the Health Department would not agree. The City of Puyallup refused to consent to the well being constructed. The applicant attempted the dispute resolution process, but it was unsuccessful. The applicant then submitted this request to the Hearing Examiner to settle the dispute pursuant to Pierce County Code (PCC) Section 19B.140.090(F)(2), which states as follows:

Unresolved timely and reasonable service disputes shall be referred by the Lead Agency to the Pierce County Hearing Examiner for final resolution of non land use matters pursuant to Pierce County subsection 1.22.080 B.2.(k).

PCC Section 19D.140.090(H) continues to state as follows:

- H. Boundary Line Adjustment Based Upon Determination of Untimely or Unreasonable Service. If the Hearing Examiner finds that a purveyor is unable or unwilling to provide timely and reasonable service within its exclusive water service area boundary, the Hearing Examiner shall readjust the purveyor's boundaries to an area which the purveyor will be able and willing to provide service and/or impose reasonable conditions pursuant to Pierce County Code subsection 1.22.080 C, to ensure timely reasonable service. The Hearing Examiner's determination on readjustment of the water service area boundary and/or imposition of reasonable conditions shall be supported by substantial evidence in the record.

The above quoted sections authorize the Examiner to readjust the City's water service boundaries and/or impose reasonable conditions to ensure timely and reasonable service.

8. There was no testimony provided by any representative from the City of Puyallup. The City failed to appear at the hearing despite receiving notice that it was going to take place on this particular date and time. A phone call was made to them in the morning, but a representative from the City of Puyallup indicated that no one planned on attending the hearing.
9. The County has requested that the Examiner make a ruling that other applicants experiencing the same situation as the present applicant be allowed to pursue alternative options for water service. However, such request is beyond the scope of this hearing and the quasi-judicial process. Although the CWSP gives authority to Hearing Examiner to readjust the boundaries of a purveyor it is not the intent of the Pierce County Council to allow the Hearing Examiner to rule beyond a case by case basis. Such would mirror the duties of the legislative body and go beyond the hearing examiner powers and duties.

CONCLUSIONS:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented

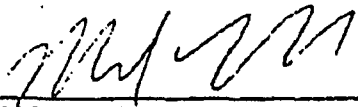
by this request.

2. The issues raised by this dispute are whether or not the City is allowed to refuse water service to properties within the water service area and not allow, or not consent to allowing, other water service options. There is also a request that other properties in similar situations be allowed to use alternative water sources.
3. The City of Puyallup has refused to provide water service to the applicant because the subject parcel is not annexed within the City. Despite the CWSP requiring a water service provider to provide timely and reasonable service, the Puyallup Municipal Code has allowed discretion to the City of Puyallup in these particular cases. The CWSP defines timely service as service that is provided within 120 days of the request for a water service. Clearly timely water service is not being provided by the City of Puyallup given that they have not, to this day, agreed to provide the water service.
4. The CWSP allows an applicant who cannot be provided timely and reasonable service from a water service provider to seek alternative means of obtaining the service. The applicant had already agreed to sign a no protest annexation agreement. Clearly the applicant does not have any control over other property owners. The applicant is allowed to seek other water service options.

DECISION:

The City of Puyallup is unwilling to provide timely and reasonable water service to the applicant's parcel. Therefore, the applicant's parcel is hereby removed from the City of Puyallup's water service area. The applicant is allowed to proceed with his plans to develop a Group A well water system as an alternative to obtaining service from the City of Puyallup.

ORDERED this 19th day of May, 2005.


 MARK E. HURDELBRINK
 Deputy Hearing Examiner

TRANSMITTED this 20th day of May, 2005, to the following:

APPLICANT:

Plexus Investments LLC – Ted Spice
 PO BOX 2133
 Sumner, WA 98390

OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

DECISION ON RECONSIDERATION

CASE NO.: Resolution of a Water Service Dispute involving Plexus Investments LLC and the City of Puyallup

APPLICANT: Plexus Investments LLC – Ted Spice
PO Box 2133
Sumner, WA 98390

A decision resolving a water service dispute involving Plexus Investments LLC and the City of Puyallup was issued on May 19, 2005. There were two requests for reconsideration received. The first was a request from Pierce County Public Works. Their request was that the Examiner reconsider his decision as it relates to applying a decision to areas that are similarly situated as this particular parcel. The original decision did not grant relief to any other parcel other than the one parcel that was before the Examiner. The second request was received from Plexus Investments LLC. The request was to modify various findings and conclusions and to issue a revised decision. The request for the revised decision was to mandate that the City of Puyallup be required to provide water service to the applicant's parcel and to issue a water service availability letter.

PIERCE COUNTY PUBLIC WORKS REQUEST

1. The original decision limited the readjustment of the boundaries for the City of Puyallup Water District to just this particular site. The Request for Reconsideration states that the Examiner erred in finding that he did not have authority to readjust the service boundaries for all properties that would be in the same situation as the applicant. The County desires that the Examiner find that all water customers located outside of the Puyallup City Limits, but within Puyallup's exclusive water area, should automatically be allowed to pursue alternative options for water service. There have been several other parcels that have been in the same situation as Plexus Investments LLC. The City of Puyallup has declined to provide timely and reasonable service despite these areas being within their exclusive water

Chapter 5 Laws of 2003) amended the State Board of Health Code (43.20 RCW) to require that municipal water suppliers provide water service to all new retail customers within retail service areas under certain conditions. For this purpose, a retail service area is the area within which water is or will be sold directly to the ultimate consumers. The designation of a retail service area occurs when a municipal water supplier obtains DOH approval of a water system plan and the designation must be consistent with applicable adopted local land use plans, comprehensive plans, coordinated water system plans, watershed plans and development regulations.

According to *Washington State Department of Health Interim Guidance Attachment 7 – Retail Service Area and Duty to Serve* November 6, 2003, the new duty to service requirements have the following affect on water systems:

How does a Retail Service Area affect my Water System?

According to the Municipal Water Law, a municipal water supplier, (as now defined in RCW 90.03.015) has a duty to serve new water service (including individual connections) within the identified retail service area if the utility

- a) can provide water service in a timely and reasonable manner;*
- b) has sufficient water rights, or uses water from a source that has a water right;*
- c) has sufficient capacity to serve the water in a safe and reliable manner as determined by the Department of Health; and,*
- d) is consistent with the requirements of any comprehensive plans or development regulations adopted under chapter 36.70A RCW or any other applicable adopted comprehensive plans, land use plans, or development regulations.*

Specific Situation

In June 2004, the Applicant received a letter from the City of Puyallup acknowledging the Applicant's request for a water availability letter for tax parcel 7705000191, but informing the Applicant that the City of Puyallup had "implemented a 6-month moratorium for the acceptance, processing or issuance of any requests for water or sewer service outside the city's corporate boundaries. This ordinance, passed January 5, 2004 will be in effect until revoked and/or revised by the City Council or until July 4, 2004." (Correspondence to Ted Spice, June 11, 2004 from Colleen M. Harris, Development Services Support Manager, City of Puyallup, Development Services Support.)

On August 3, 2004 the Applicant attended a pre-application meeting with officials from the City of Puyallup. Puyallup Municipal Code Chapter 14.22.011 states: "Prior to the acceptance of an application by the city, applicants shall participate in a pre-application

conference for the purpose of establishing the application fee." According to the "memo for the file" issued following the August 3, 2004 pre-application meeting, the Applicant was informed of the following during the meeting:

MISC – ANNEXATION (COLLEEN HARRIS):

Annexation must be in the process before water availability letters can be issue (sic). At the time annexation commences, a pre-annexation utility extension can be applied for. If connections take place prior to annexation, the applicant shall be double-water fees. If connections take place after annexation, regular fees will apply. (City of Puyallup Development Services Support Division Memorandum, to Project File, from Colleen Harris, DSS Manager, subject Spice Warehouses, dated August 3, 2004.)

On August 16, 2004, the Applicant received an email message from Colleen Harris further explaining the City's process regarding water service to unincorporated Pierce County which stated, in part, the following: "As we indicated in the pre-app, the City of Puyallup cannot issue you a water availability letter until your property is in the process of being annexed. At this time, we have not received enough signatures from properties within your area to proceed ahead with annexation. Therefore, the City is unable to issue you a water availability letter at this time."

On September 16, 2004 the Applicant received correspondence from the Tacoma-Pierce County Health Department following a request to drill a public well on tax parcel 7705000191. The correspondence informed the Applicant that a new public water system could not be developed until a letter of consent was issued from the City of Puyallup or a revision to the City of Puyallup's designated service area was made by the Pierce County Hearing Examiner via the CWSP Dispute Resolution Process.

The approval to drill shall not be issued until the TPCHD receives a letter from the City of Puyallup allowing the creation of a new public water system within its service area. If this letter is not obtainable then the Pierce County Coordinated Water System Plan does allow you to enter into the Dispute Resolution process. The determination by the Hearing examiner may be submitted to support your creation of a public water system.

The TPCHD is obligated to follow these procedures before granting a public well site approval. (Correspondence to Ted Spice from Richard J. Hoesch, Environmental Health Specialist II, Tacoma-Pierce County Health Department dated September 16, 2004)

As of December 17, 2004 the Applicant was unable to obtain such a letter of relinquishment from the City of Puyallup.

ATTACHMENT A

STANDARD SERVICE AGREEMENT
ESTABLISHING WATER UTILITY
SERVICE AREA BOUNDARIES

PREAMBLE

THIS AGREEMENT establishing water utility service area boundaries is entered into this day for purposes of identifying the external boundaries of the service area for which this water purveyor has assumed water service responsibility.

WHEREAS, service area agreements are required by WAC 246-293-250 to help assure that water reserved for public water supply purposes within Pierce County will be utilized in the future in an efficient and planned manner; and

WHEREAS, the designation of retail water service area and future service planning areas, together with the cooperation of other utilities, will help assure efficient planning to accommodate growth, avoid duplication of service, and facilitate the best use of resources; and

WHEREAS, The responsibilities applicable to water purveyors are outlined in the Pierce County Coordinated Water System Plan (CWSP) and by the adopted rules and regulations of the Washington State Department of Health (DOH); and

WHEREAS, It is not the intent of this Agreement to give new authority or responsibilities to the water purveyor or to the County or State regulatory agencies, in addition to those requirements imposed by law; and

WHEREAS, the provisions within the Agreement which identify guidelines for the transfer of customers between two water purveyors, the submittal of information to the designated lead agency within Pierce County, and the procedures to be followed in adjusting the boundaries established at the time the Agreement is signed, are intended to satisfy the conditions of Chapter 70.115 RCW, the "Public Water Systems Coordination Act";

NOW, THEREFORE, the undersigned party, having entered into this Agreement by its signature, concur with and will abide by the following provisions:

STANDARD SERVICE AGREEMENT
ESTABLISHING WATER UTILITY
SERVICE AREA BOUNDARIES - 1

RECEIVED

AUG 30 1994

PIERCE COUNTY PUBLIC WORKS & UTILITIES
Gravelly Lake

647

Section 1. The terms used within the contract shall be as defined in the implementing regulations of Chapter 70.116 RCW, except as identified below.

- A. Lead Agency shall mean the department or organization within Pierce County that has been designated by the Pierce County Executive as being administratively responsible for the coordination and filing of the Pierce County Water Service Area map, Standard Service Agreement Establishing Water Utility Service Area Boundaries, Agreements for Retail Service Areas, Utility Service Policies, and other administrative documents necessary for the implementation of the Pierce County CWSP.
- B. Pierce County Coordinated Water System Plan (CWSP) shall mean the plan adopted by the Pierce County Council for public water systems within critical water supply service areas within Pierce County which identifies the present and future needs of the systems and sets forth means for meeting those needs in the most efficient manner possible.
- C. Pierce County Water Service Area Map shall mean the map referenced in this Agreement for the retail service area signed by the water purveyor, except as amended in accordance with the CWSP procedures and with the concurrence of the affected water purveyors.
- D. Retail Service Area shall mean the designated geographical area within Pierce County in which the undersigned water purveyor assumes full responsibility for providing water service to individual customers.
- E. Utility Service Policies shall mean those policies and conditions of service that are attached to the provision of water service for individual customers. The identified policies and conditions of service are those conditions incorporated within the water purveyor's water system improvement and expansion plans required under the provisions of the Public Water Systems Coordination Act and DOH.
- F. Wholesale Service Area shall mean the geographical area in which a purveyor, a group of purveyors, or another organization provides water to other water purveyors on a wholesale basis. A wholesale water supplier shall not provide water to individual customers in another purveyor's retail service area except with the concurrence of the purveyor responsible.

STANDARD SERVICE AGREEMENT
ESTABLISHING WATER UTILITY
SERVICE AREA BOUNDARIES - 2

Section 2. Lead Agency. The lead agency for administering the Pierce County Water Utility service area agreements shall be the Pierce County Department of Public Works and Utilities unless otherwise established by the Pierce County Executive. The lead agency shall function only as a coordination center. The lead agency will maintain the original documents and will be responsible for updating the water system map and agreements as provided for in the CWSP.

Section 3. Authority The authority for this Agreement is granted by the Public Water Systems Coordination Act of 1977, Chapter 70.116 RCW.

Section 4. Service Area Boundaries. The undersigned Water Purveyor acknowledges that the Pierce County Water Service Area Maps identifying its retail service area boundaries, dated August, 1994 and included as Attachment A to this Agreement, identify the Water purveyor's present and future service area. The undersigned further acknowledges that there are no service area conflicts with an adjacent water utility or purveyor, or, if such a conflict exists, agrees that no new water service will be extended within disputed areas except as stipulated in an adjudication by DOH.

This agreement shall apply to service areas existing as of August, 1994, and to the service area boundaries identified in the above referenced maps, or as shown on current revisions thereof, provided that no revisions of service areas shown on these maps shall be made without prior written concurrence of the water utilities/purveyors involved and such written concurrence is filed with the Lead Agency. Revisions may also require an amendment to the purveyor's or utility's service plans.

Section 5. Common Service Area Transfer. Common service areas between this purveyor and the adjacent purveyor, if they exist, are described in Attachment B to this agreement. The undersigned party agrees that any water line for retail service extending outside of the retail service area boundary, as set forth in Section 2, shall be phased out and service transferred to the designated adjacent utility on an economic basis or by mutual agreement.

Economic basis considerations may include:

- (a) A determination by the present owners of service lines that maintenance, repair, and/or replacement costs exceed attributable income; or
- (b) Planned or imminent major street improvements or major improvements to either or both water systems are anticipated which include an opportunity to transfer service.

It is understood that in the interim, those purveyors or utilities may continue existing water service within the boundaries of neighboring utilities until a date certain upon which they must be removed or transferred to the adjacent utility or purveyor as described herein.

The terms of the transfer of service are described in this Section shall be established in a separate agreement among the adjacent purveyors or utilities whose boundaries are affected. Unless otherwise set forth in said transfer agreement:

- (a) The purveyor or utility discontinuing service shall be responsible to provide the connection of service lines to the accepting water purveyor or utility, and shall also be responsible for removal of existing meters, and any surface repairs as may be required by the transfer;
- (b) the accepting purveyor or utility shall install its meters and perform all steps necessary to assume water service responsibility to the customer(s) on said water lines.

Any transfer agreements between this purveyor and adjacent utilities are attached hereto as Attachment B and incorporated herein by this reference.

Section 6. Boundary Streets. Unless separate agreements are made with adjacent utilities, this party agrees that the utility which is located to the north or west of the boundary streets between this party and adjacent utilities will be entitled to provide future water service on both sides of those streets. Depth of service on boundary streets shall be limited to one platted lot or as otherwise agreed by the utilities. Existing services on boundary streets shall remain as connected unless transfer of service is agreed to by both parties.

Section 7. Boundary Adjustments. If, at some time in the future it is in the best interest of the undersigned parties to make service area boundary adjustments, such modifications must be by written concurrence of all involved utilities and the proper legislative authority(ies), and must be noted and filed with the designated Pierce County lead agency and DOH. It is understood by the undersigned utility that it may decline to provide service within its designated service area boundary, but in that case, an applicant may be referred to other adjacent purveyors or utilities or a new utility may be created and the original service area boundary will be adjusted accordingly.

Section 8. System Extension Policies. The undersigned utility agrees that in order to expand its existing water service area, (other than by addition of retail customers to existing water mains), or to serve in the capacity of a prequalified satellite system management agency (SSMA), it shall have adopted design standards and Utility Service extension policies. The design standards shall meet or exceed the Pierce County Water System Minimum Standards and Specifications.

A water utility anticipating expansion of retail service in unincorporated areas of Pierce County, or intending to operate as an SSMA, shall identify utility service policies in its updated water system plan. The undersigned utility agrees to identify, for information, its utility service policies or provide a copy of the updated water system plan to the Lead Agency prior to application for extension of its existing water system into new service areas within the unincorporated areas of Pierce County.

Municipalities further agree that if they identify a service area outside of their existing municipal corporate boundaries, the municipality will assume full responsibility for providing water service equivalent to the level of service provided for their customers inside the city limits with similar service requirements, and must also meet or exceed Pierce County's minimum design standards.

Section 9. Special Working Agreements. Special working agreements, if they exist and are relevant, between this water purveyor and an adjacent water purveyor shall be attached to this Agreement as Attachment B and incorporated herein by this reference.

Section 10. Compliance with the CWSP. Nothing in this Agreement shall waive any requirement of the state, federal or local government regarding the provision of water service. This Agreement shall comply with the interlocal agreement requirement of the CWSP.

IN WITNESS WHEREOF, the undersigned party has executed this Agreement as of 8/29/94.

CITY OF PUYALLUP
Water Purveyor

Alvin Maxwell
Representative

WATER DIVISION SUPERVISOR
Title

Receipt Acknowledged:

Tacoma-Pierce County Health Department

Date

STANDARD SERVICE AGREEMENT
ESTABLISHING WATER UTILITY
SERVICE AREA BOUNDARIES - 6

Hon. Judge Nevin
31 May 2013
Hearing set 9:00 AM

IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

TED SPICE AND PLEXUS DEVELOPMENT,
LLC, and DORIS E. MATHEWS
Petitioners,

NO. 07-2-11635-0

DECLARATION OF
PETITIONER TED SPICE

v.

PIERCE COUNTY, a political subdivision,
and CITY OF PUYALLUP, a municipal
corporation

Respondents.

1. I, Ted Spice, am one of the Petitioners herein and make this declaration based on personal knowledge.

2. I am familiar with and followed closely the cases of *Stanzel v. Pierce County*, 07-2-11228-1 and also in *Pierce County v. Stanzel*, 08-2158093, where Judge Larkin, Pierce County Superior Court ruled the Pierce County Hearing Examiner does have the authority to decide on whether annexation is a reasonable condition precedent to water service. See **Attachment** _ Orders.

3. Both Judge Larkin and the Pierce County Hearing Examiner ruled that Puyallup's provision of water service **cannot** reasonably be tied to annexation. See (page 19 – 25 and pages 31-34, certified Admin Record on file in *Pierce County v. Stanzel*, 08-2158093, **Attachment** _ true and correct copies attached to Declaration of Counsel on file.

4. Our present facts in this case are identical to the facts in the *Stanzel v.*

DECLARATION OF TEDSPICE

- 1

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988-990

1 *Pierce County* matter(s) as both Stanzel and present Petitioners were residential water
2 service customers of Puyallup and sought merely to change to commercial water
3 service from Puyallup, but were denied the ability even to complete the Puyallup
4 application process. At one point we both were the subject of a combined hearing
before the Pierce County Hearing Examiner.

5 5. As I followed the *Stanzel* cases closely, I saw it involved two Superior
6 Court litigation matters and at least three trips to the Court of Appeals.

7 6. We petitioners in this case sought not to duplicate those redundant and
8 litigious actions.

9 7. Upon conclusion of the *Stanzel* case, we Petitioners sought resolution
10 with Puyallup, and were met with various milestones from Puyallup, including waiting
11 for one Puyallup attorney to recover from boating accident injuries, and fending off
12 two merit less claims from Puyallup that first – Petitioners’ attorney should be
13 conflicted out of representation (now abandoned /waived by Puyallup) and the
14 Petitioners’ witness was somehow conflicted because he acted as subcontractor by
selling city real estate.

15 8. Neither Puyallup issue had merit but contributed to a lapse of time.

16 9. Here, our facts are stronger than that of Plaintiff Stanzel, as here our
17 development plans for construction of office warehouse facility were clear, unequivocal
18 and substantial.

19 10. We petitioners can support our damages figures, including loss of value,
20 income profits and attorney fees, each of which are substantial.

21 11. Puyallup’s current (apparent) wiliness to accept water service application
22 without annexation does not make us whole for the past damages. This relief comes
23 too late, and does not exonerate the City from its wrongful past actions.

24 12. Puyallup’s denial of water service had the direct result of stalling the
25 project at a time when market conditions were most favorable to now.

13. Puyallup is aware of Petitioner’ damages, as is supported by industry

DECLARATION OF TEDSPICE

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1 experts.

2
3 14. I obtained an expert's report in support of my damages which addresses
4 the appetite of the commercial industrial market in 2005, when our project was
5 launched, which was on the rise and favorable.

6 15. I through my attorneys previously provided the City with a summary
7 synopsise and a Report of the basis for Petitioners' damages amount, a copy of which
8 is attached.

9 16. I ask for my day in court to make my case for damages.

10
11 I declare under the laws of perjury for the State of Washington that the foregoing
12 statement is true and correct.

13 Signed this _20th_ day of May 2013 at Pierce County Washington.

14 51
TED SPICE PETITIONER

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DECLARATION OF TEDSPICE

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12) *Supplemental Declaration of Michael C. Walter in Reply to Petitioners' Opposition and in Additional Support of the City's Motion for Summary Judgment, dated May 28, 2013 (and attachments and exhibits thereto).*

THE COURT DECIDED the City of Puyallup's Motion for Summary Judgment, pursuant to CR 56 and PCLR 56, after hearing argument by counsel for all parties on May 31, 2013. *The court only considered those pleadings properly before the court pursuant to local and state court rules. The court did not consider pleadings which were not timely filed pursuant to local court rules. 9/11*

BASED ON THE FOREGOING and pursuant to CR 56 and PCLR 7(b)(10), the Court concludes as follows: (1) There has been no compliance with the Court's September 12, 2008 Order and no remand to the Hearing Examiner; (2) Petitioners have ^{signed a stipulation} ~~now stipulated~~ *acknowledging* *signed on 23 May 2013 and properly before the court.* *9/11* that the LUPA matter "has been fully adjudicated"; (3) the Pierce County Hearing Examiner's August 7, 2007 Decision is final and binding; (4) Petitioners have not complied with the City of Puyallup's water service requirements, and never submitted an application for water service or change of water service to the City; and (5) ~~in light of conclusions (1) - (4).~~ Petitioners cannot meet various predicate requirements for a cause of action under RCW ch. 64.40 and, therefore, Petitioners' RCW ch. 64.40 damage claim is not ripe and *The court further finds that irrespective of defendant's argument of plaintiffs' jurisdiction, it is appropriate to dismiss this LUPA action. The court accepts and agrees with the proffered submitted by the city in their Memo, and am of action - was dated 29 March 2013, specifically pages 18-31, and all other filings, properly before this court, in this matter.*

NOW, THEREFORE, IT IS HEREBY:

ORDERED, ADJUDGED AND DECREED the Pierce County Hearing Examiner's August 7, 2007 decision is final and binding, and any claims arising out of that decision are now barred from judicial or other review; and, it is hereby also

ORDERED, ADJUDGED AND DECREED that Petitioners' LUPA claim is final, binding and "fully adjudicated," and any further trial court review of or claims arising out

~~PROPOSED~~ ORDER GRANTING
SUMMARY JUDGMENT, DISMISSING
CASE WITH PREJUDICE AND AWARDED
ATTORNEYS' FEES - 3
07-2-11635-0

KEATING, BUCKLIN & MCCORMACK, INC., P.S.
ATTORNEYS AT LAW
800 FIFTH AVENUE, SUITE 4141
SEATTLE, WASHINGTON 98104-3170
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CP1143

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

TED SPICE and PLEXUS DEVELOPMENT,)	
LLC, and DORIS E. MATTHEWS,)	
)	
)	
Petitioners,)	
)	
vs.)	No. 07-2-11635-0
)	
PIERCE COUNTY, a political)	
subdivision, and CITY OF PUYALLUP,)	
a municipal corporation,,)	
)	
Respondents.)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 25th day of January 2008, the following proceedings were held before the Honorable BRYAN E. CHUSHCOFF, Judge of the Superior Court of the State of Washington, in and for the County of Pierce, sitting in Department 4.

WHEREUPON, the following proceedings were had, to wit:

APPENDIX 10

1 hearing. If they thought exhaustion --

2 THE COURT: You mean the City of Puyallup chose
3 not to show up.

4 MS. LAKE: If they thought exhaustion and that the
5 applicant had to go through their own process, then why
6 didn't they raise that to the examiner at the first
7 hearing? They didn't. The examiner said, as a result,
8 you are foreclosed. The rulings of the case are the
9 rulings of the case. I have authority to hear this
10 dispute. I find that you have denied reasonable
11 service, and I'm going to apply these different
12 remedies.

13 THE COURT: I thought that he kind of punted the
14 thing by saying, okay, I will let you out of the
15 service area, and you can pursue things on your own.

16 MS. LAKE: In the first hearing, he said, go forth
17 and see if other solutions are possible. We went
18 forth. No other solutions were possible. That's why
19 we went back to him. And then the examiner said, I do
20 find that there are no feasible alternatives. He was
21 very candid. He posed the question, "I'm not sure
22 whether I have authority." He was, essentially,
23 inviting an appeal up to the Court so the Court could
24 rule.

25 THE COURT: Of course, he made a decision that he

1 didn't.

2 MS. LAKE: Yes, he made a decision that says, "If
3 it's found that I have authority, I will grant the
4 relief." The relief that we are requesting falls
5 squarely within his broad authority to carry out the
6 effect of the regional water plan and remove the one
7 condition that Pierce County says it's per se and
8 reasonable that will allow Mr. Spice to go forth, pay
9 his money to the City, and get the water that he
10 deserves.

11 THE COURT: Well, here's my view of this whole
12 thing: I mean, it does appear to me that the City of
13 Puyallup has acted in a fairly shabby way, I must say,
14 in the way in which it has required annexation. I
15 think that the hearing examiner, as I said, felt the
16 same way. He didn't express that that was part of the
17 decision, but he indicated that he couldn't compel
18 water service to the site. I'm not sure that the
19 issues are identical.

20 From my point of view, it is kind of like this:
21 The City is taking the position that -- it seems to me
22 that the petitioner is like a stranger to them. They
23 have never heard of him before practically. All of a
24 sudden, they want water from us. We are going to treat
25 you like a completely outside person. That is just not

1 true. They receive current residential water service.
2 They are within the water service area. They throw up
3 this business about being annexed in and so on. They
4 cite an ordinance, which requires them to act as if
5 they are outside the service area. That all looks
6 wrong to me.

7 In looking at the legal authority of what the
8 Pierce County Hearing Examiner can do, I'm not so sure
9 that the hearing examiner wasn't being correct. I
10 mean, I'm concerned with the concerns that Mr. Yamamoto
11 raises with respect to just any retail customer wanting
12 to be in front of the Pierce County Hearing Examiner
13 but, you know -- instead of the City's Hearing
14 Examiner. The City treated them like they were an
15 outsider. The City treated them like they were
16 somebody that had nothing whatsoever to do with the
17 City of Puyallup. They didn't treat them like a
18 regular retail customer. In some ways, they want to
19 have it both ways, and they kind of drove the boat
20 here.

21 One of the reasons that I suspect that people want
22 to avoid the Puyallup Hearing Examiner is because the
23 Puyallup Hearing Examiner is hired by the City of
24 Puyallup. They assume the worst, which is probably not
25 fair to the -- I'm sure it is not fair to the Puyallup

1 Hearing Examiner. Puyallup treated them like they were
2 on the outside. They are simply saying, well, we're
3 not. The Pierce County Hearing Examiner was saying
4 they weren't either.

5 Once there is an issue of -- it seems to me that
6 the City threw two hurdles in the path of the
7 petitioner here: One was this annexation request, and
8 one was compliance with this ordinance as if they were
9 completely an outside person. It seems to me that they
10 are probably wrong about both of them.

11 I don't think that the Pierce County Hearing
12 Examiner has the authority to say that the application
13 that the City's ordinance to this petitioner is wrong.
14 I think that is the province of the City Hearing
15 Examiner. I think if push came to shove, the City's
16 Hearing Examiner would tell them that they're wrong,
17 but the petitioner -- which is one of the frustrations
18 here because it seems kind of senseless to send it all
19 through that process when the City is going to lose.
20 Why not just make them lose now and spare everybody the
21 pain?

22 MR. YAMAMOTO: The City, certainly, hasn't gotten
23 to brief the legitimacy of those particular issues,
24 Your Honor.

25 THE COURT: Sure. You know, there we are.

1 decision one way or another with respect to annexation.
2 I think that he has the authority to overrule one way
3 or the other the way that things are.

4 MR. YAMAMOTO: Beyond the annexation issue then,
5 will Mr. Hurdelbrink, the Pierce County Hearing
6 Examiner, then decide, you know, what sort of fees
7 should be imposed and the process, the approval
8 process, that would normally occur before the city
9 council not occur then?

10 MS. LAKE: We would stipulate that with the
11 hearing examiner ruling on the issue of pre-annexation,
12 we would stipulate to follow the City's internal water
13 application process.

14 MR. YAMAMOTO: Basically, the point that I'm
15 attempting to make, Your Honor, is, once again, even if
16 the hearing examiner addresses the issue of annexation,
17 which normally the city council would, the city council
18 would say, okay, your efforts to annex are sufficient.
19 Once again, now that is being put before the Pierce
20 County Hearing Examiner rather than the city council.

21 Puyallup would like that decision to be made by,
22 as its code requires, the city council.

23 THE COURT: I don't think that is how it works,
24 Mr. Yamamoto. Here's the reason why: Certainly, the
25 City has its opinions one way or another with respect

1 to annexation, and the city council is entitled to do
2 whatever they want with respect to that. They have
3 signed onto a service agreement. They have signed onto
4 a water service area. These folks are within that
5 water service area. They have to provide water on
6 reasonable conditions, but they have to provide water
7 to them.

8 MR. YAMAMOTO: Correct.

9 THE COURT: So to put on an unreasonable condition
10 on them, like annexation, which is, to me, outside the
11 normal application process, because -- that is why I
12 think that Hurdelbrink can rule on this -- because it
13 is not like saying, what are the system requirements,
14 what are the load factors, on and on and on. It's none
15 of that kind of stuff. This is a purely political
16 decision as to whether or not you are going to get
17 water. You will if you are a city resident, and you
18 won't if you aren't. That, it seems to me, has to do
19 with this kind of water service area dispute that the
20 county code is at least wanting to add to the contract
21 are supposed to want to do. It seems to me that the
22 county council has voted their opinion out of existence
23 by joining that contract.

24 MR. YAMAMOTO: I raise the issue, Your Honor,
25 because the very application process, PMC, Puyallup's

1 Municipal Code, 1422 is the code section that sets up
2 the application process and also is the code section
3 that requires annexation.

4 THE COURT: Well, then, they have set up
5 conflicting deals because they have, on the one hand,
6 agreed to do something different from their own code.

7 MR. YAMAMOTO: Well, it is one of their
8 application requirements, and the City can decide
9 whether or not it waives its application requirements
10 or the application requirements are otherwise
11 satisfied.

12 THE COURT: If they pass an ordinance that
13 violates their contractual agreements to all of the
14 people, to the extent that they do that, I don't think
15 that they can.

16 For instance, let's just assume for the moment
17 that requiring annexation to anybody -- if they wanted
18 to do that, they should have said, "We are not agreeing
19 to provide a water service area beyond our city
20 limits," but they didn't do that. Once they agreed to
21 a water service area outside their city limits, then
22 they have to provide water to that water service area.
23 They have agreed to do that already. They can't now
24 say, "Well, by the way, we've changed our mind. We
25 don't want to do that." Now we are going to pass an

1 ordinance that says so.

2 MR. YAMAMOTO: I don't disagree with that,
3 Your Honor. What I'm suggesting, though, is that still
4 those issues are properly before, first of all, the
5 city council in the City's application process.

6 THE COURT: I think if Hurdelbrink tells you that
7 it is improper for you to require as a precondition to
8 anything, annexation of this property into the city
9 limits, that is the end of the issue unless you come
10 back to Superior Court and they say you're wrong.

11 MR. YAMAMOTO: This is a rhetorical question, as I
12 have argued earlier, why shouldn't that be the City's
13 Hearing Examiner that rules on the City's code?

14 THE COURT: Because as I have said before, this is
15 a political decision -- and they have contractually
16 bound themselves to this deal. The Pierce County
17 dispute resolution process will resolve these issues
18 with respect to who is in and who is out of a
19 particular water service area. Once they have agreed
20 that their water service area includes them, they can't
21 change the conditions of that unilaterally.

22 MR. YAMAMOTO: I think following then on the
23 Court's earlier analysis, what then happens to the
24 application procedure itself? That simply is not
25 addressed by the issue of annexation.

1 MS. LAKE: We follow it.

2 THE COURT: If they follow the application process
3 in other regards, then that's fine, but you can't
4 require annexation. That's all.

5 MR. YAMAMOTO: Hopefully, that is just a
6 far-sighted ruling.

7 THE COURT: Potentially --

8 MR. YAMAMOTO: Literally, Your Honor, we have not
9 briefed that, and that hasn't been raised. That wasn't
10 raised before the hearing examiner or ruled on by the
11 hearing examiner.

12 THE COURT: It wasn't ruled on by the hearing
13 examiner. That is true. It certainly has been
14 discussed at some length. It seems to me that it may
15 have something to do with what he was saying here. I
16 do think that is -- from what I can see, that is how
17 Hurdelbrink feels about it, and I tend to agree with
18 it.

19 I'm going to remand this back and tell him that he
20 has authority to rule on the issue.

21 MS. LAKE: We will prepare an order, Your Honor.

22 THE COURT: I agree with him, I don't think that
23 he has the authority to say, now you must provide the
24 water. Now you have to go back through the internal
25 process. If there is a problem with that, that goes to

OFFICE OF THE HEARING EXAMINER

PIERCE COUNTY

REPORT AND DECISION

CASE NO.: Resolution of a Water Service Dispute Involving Michael Stanzel a
the City of Puyallup

APPLICANT: Michael Stanzel
6224 – 114th Avenue Court East
Puyallup, WA 98372

AGENT: Richard Aramburu
Attorney at Law
Suite 209, College Club Building
505 Madison Street
Seattle, WA 98104

SUMMARY OF REQUEST:

The applicant is requesting that the Pierce County Hearing Examiner require the City of Puyallup to provide water service and a water availability service letter for the property located at 6224 – 114th Avenue Court East (Parcel No.: 0420228038) located within the City of Puyallup's exclusive Water Service and Urban Growth Areas.

SUMMARY OF DECISION:

Denied.

PUBLIC HEARING:

After reviewing Planning and Land Services Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on April 4, 2007 at 9:02 a.m.
A continuance was granted and hearing was reconvened on June 20, 2007 at 9:03 a.m.

2-

15
ATTACHMENT

11

other recreational amenities. He is currently provided water by the City of Puyallup and pays a monthly bill. This property is located within the City of Puyallup water service area.

Exhibits were entered into the record. There was discussion about the standard service agreements and what they stated, along with wordings in other documents. There were some other Exhibits submitted. Mr. Stanzel needs fire flow now. His use will be commercial. He wants to add a game room and provide additional restrooms. That will be the only change in use. He has been trying for years to get water service. He hired an engineering firm to design his drain field. He only needs a water availability letter to do the expansion. The water line runs right outside of his property. There will be no change in what the City provides. They may require a different meter, but nothing else. Letters from City Representatives were discussed. Letters were received from Mr. Utterback and Mr. Hienecke regarding Mr. Stanzel's water service inquiry. This concerned the previous piece of property that was already subject to a Pierce County Decision. That piece of property was removed from their water service area. Mr. Stanzel has sent letters to the City to try and get a water availability letter. He was just sent copies of the Puyallup City Code. There has been an election requesting that this area be annexed into the City of Puyallup. That failed. They are continuing to try and annex this property. There were many other Exhibits entered into the record. He has looked into other possible sources for water. He could obtain a tank, but it is cost prohibitive. The closest other water purveyor just isn't close enough to make it feasible for him to be provided water. There was another piece of property in this area that was allowed to be provided water by the City of Puyallup despite not annexing. He does not understand why he was not allowed water. The location of this particular property in relation to other properties was discussed. The other water purveyor is approximately three quarters of a mile away under railroad tracks. He needs these additional bathrooms and the expansion of the game room. His use is really limited to summertime months now. He needs a water availability letter to allow the expansion. Upon questioning of BRETT VINSON, Mr. Stanzel does acknowledge that his name is not on the standard service agreement. He reiterated that he just wants the City to provide him water.

Reappearing was RICHARD ARAMBURU who gave closing arguments.

Reappearing was BRETT VINSON who gave the City's closing arguments.

No one spoke further in this matter and the Examiner took the matter under advisement. The hearing was concluded June 20, 2007 at 12:12 p.m.

NOTE: A complete record of this hearing is available in the office of Pierce County Planning and Land Services.

FINDINGS, CONCLUSIONS AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, viewed the property, and taken this matter under advisement.
2. Notice of this request was advertised in accordance with Chapter 1.22 of the Pierce County Code. The date and time of the hearing was published two (2) weeks prior to the hearing in the official Pierce County newspaper.
3. The applicant has a possessory ownership in property located at 6224 - 114th Avenue Court East. The property is currently improved with an existing building, and recreational facilities. The applicant wishes to construct and rebuild a building on his property for commercial purposes. This piece of property is subject to Pierce County zoning requirements. It is not located within the City of Puyallup. The construction would be consistent with Pierce County zoning.
4. In 1977 the Washington State Legislature adopted the Public Water System Coordination Act of 1977, which is presently codified in ch. 7.116 RCW. The Act requires that service area boundaries be established by written agreement among the purveyors. Pursuant to this Legislation, Pierce County adopted the Pierce County Coordinated Water System Plan ("CWSP"), which established water service boundaries within Pierce County. According to Section 1 of the CWSP, the objective is to assist water purveyors to effectively plan by establishing exclusive water service areas, thereby ensuring the most cost effective supply service to all properties within the County.
5. It is undisputed that the City of Puyallup is the exclusive water provider to this particular parcel. The City of Puyallup signed a standard service area agreement on August 29, 1994. As noted above, this particular parcel is outside of the city limits of Puyallup, but it is within the service area. The property is currently being provided water by the City of Puyallup. Pierce County is requiring a water availability letter to allow the commercial construction project to be commenced.
6. The applicant has requested numerous times that the City provide a water service availability letter to his property so that he can proceed with his commercial development. The City of Puyallup has refused to provide that water availability letter. The undisputed facts are that the City believes that the applicant must satisfy all Puyallup Municipal Code requirements prior to the City of Puyallup being required to provide water to his site. The main provision within the Puyallup Municipal Code relates to signing a pre-annexation agreement. The applicant, according to the City, must sign the pre-annexation agreement prior to him receiving water. The applicant refuses to sign this agreement. It is also undisputed that the applicant cannot reasonably receive water from any other source. A private water tank would be cost prohibitive for this particular parcel of property. The nearest

other water purveyor is over ¼ mile away and cannot provide water service to this site. This is not an extension of water service because this particular property is already being serviced by the City of Puyallup.

CONCLUSIONS:

- 1 The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
2. The applicant did not go through the normal dispute resolution process because in a previous Decision issued on January 12, 2006 (Plexus Investments LLC – Ted Spice), the Hearing Examiner stated that properties located outside of the City of Puyallup, yet in their exclusive water service provider area, could go directly to the Examiner for the resolution of disputes. Pierce County Code (PCC) Section 19D.140.090 (F) (2) states in part:

Unresolved timely and reasonable service disputes shall be referred by the lead agency to the Pierce County Hearing Examiner for final resolution of non-land use matters pursuant to Pierce County subsection 1.22.080(B)(2)(k).

PCC Section 19D.140.090(H) states as follows:

Boundary Line Adjustment Based Upon Determination of Untimely or Unreasonable Service. If the Hearing Examiner finds that a purveyor is unable or unwilling to provide timely and reasonable service within its exclusive water service area boundary, the Hearing Examiner shall readjust the purveyors boundaries to an area that the purveyor would be able and willing to provide service and/or provide reasonable conditions pursuant to Pierce County Codes subsection 1.22.080(C), to ensure timely and reasonable service. The Hearing Examiner's determination on readjustment of a water service area boundary and/or imposition of reasonable conditions shall be supported by substantial evidence in the record.

The above quoted sections authorize the Examiner to readjust the city's boundaries and/or impose reasonable conditions to ensure timely and reasonable service. The Hearing Examiner's previous Decision is consistent with the Code sections.

3. The City of Puyallup requested that the Hearing Examiner dismiss the case on jurisdictional grounds. The City argues that they were not properly served a Summons and Complaint. This is not a case of the type that encompasses a summons and complaint; rather it is a water service dispute that has been allowed to go directly to the hearing examiner. The City of Puyallup was provided ample notice of hearing. The hearing was continued for a couple months to provide more time for the City to respond. The City also argues that the applicant failed to exhaust all administrative remedies. As noted in the Findings, in a previous decision involving the City of Puyallup that was not appealed properties in similar situated areas such as Mr. Stanzel's could go directly to the examiner for relief.
4. Initially the issue is whether the requirement that a pre-annexation agreement be signed prior to obtaining water on this particular parcel is appropriate. If it is appropriate, then the applicant would be required to sign it and then go through the process of applying for water service through the City. The Pierce County Code does not require a potential customer to sign a pre-annexation agreement. PCC Section 19B.140.100 states:

Pre-annexation agreements were not contemplated in the designation of exclusive water service area boundaries by the Water Utility Coordinating Committee at the time of service area boundary designation and furthermore are not necessary for the provision of timely and unreasonable service within a purveyor exclusive water service area boundary. Therefore, a requirement that a potential customer enter into a pre-annexation agreement or a waiver of any statutorily or constitutional guaranteed right as a condition of service may be challenged as unreasonable through the dispute resolution process.

This section does not authorize a property owner to challenge a city's ability to require a pre-annexation agreement, and therefore does not conflict with R.C.W. 35.92.200. However, said section does allow a property owner to challenge the pre-annexation agreement from the limited perspective of "timely and reasonable service." A successful challenge, while not affecting the city's authority to require a pre-annexation agreement, would allow an applicant to seek an alternative water supply and/or other relief.

5. In this particular case, requiring the applicant to execute a pre-annexation agreement to receive water from the City is not reasonable because this is not an extension or significant expansion of water service. The applicant is already receiving water service from the City of Puyallup for residential use. The applicant


is requesting a commercial use on his property. There will be very limited improvement on the site. The increased water requirements, if any, will be very limited. This is a situation where water is already being provided and there will be no substantial increase in use levels. While the City is correct in that a municipality cannot be compelled to provide water outside its corporate limits, the City is already providing water service to this property. The City of Puyallup also agreed in 1994, in the Standard Service Agreement establishing water utility service area boundaries, that the City would provide water service to this particular piece of property. The City actually has provided water to this property. The requirement that the applicant must sign a pre-annexation agreement, is not reasonable given these circumstances.

6. The Hearing Examiner only has that authority which is granted to it by the Pierce County Code. The Hearing Examiner agrees with the county and city officials that there is no specific authority allowing the Hearing Examiner to compel the City of Puyallup to provide water service to the applicant's property. Requesting the City of Puyallup to provide water service goes too far to be considered an "imposition of reasonable conditions" which is allowed under PCC 19D.140.190 (f) (2). If a court determines the Hearing Examiner does have authority to order this type of relief, then in this particular case, the Hearing Examiner would order the City of Puyallup to provide the service given these specific facts.

DECISION:

The request of the applicant to compel the City of Puyallup to provide water service is denied because the hearing examiner does not believe that he has authority to grant that specific relief. The applicant is allowed to seek alternative sources for water and/or be removed from the City of Puyallup's service area if desired.

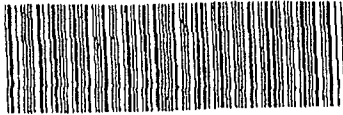
ORDERED this 26 day of July, 2007.


MARK E. HURDELBRINK
Deputy Hearing Examiner

TRANSMITTED this 26th day of July, 2007, to the following:

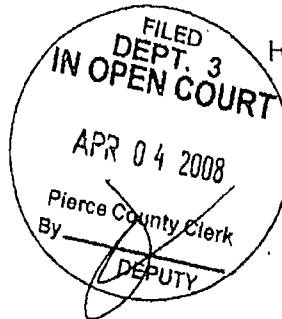
APPLICANT:

Michael Stanzel
6224 - 114th Avenue Court East
Puyallup, WA 98372



07-2-11228-1 29506521 ORRMD 04-07-08

13995 4/7/2008 09:197



Honorable Thomas P. Larkin

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

MICHAEL STANZEL,

Petitioner,

v.

PIERCE COUNTY, a political subdivision,
and CITY OF PUYALLUP, a municipal
corporation,

Respondent.

NO. 07-2-11228-1

ORDER GRANTING LAND USE
APPEAL AND REMANDING TO
THE PIERCE COUNTY HEARING
EXAMINER FOR FURTHER
PROCEEDINGS

This matter came before the court on February 21, 2008 for a hearing on
Petitioner Stanzel's Petition Under the Land Use Petition Action. The Honorable
Thomas P. Larkin presided over the hearing.

Petitioner Michael Stanzel was present and was represented by J. Richard
Aramburu, Attorney at Law. The County of Pierce was represented by David B. St.
Pierre, Deputy Prosecuting Attorney. The City of Puyallup was represented by
Kevin J. Yamamoto, Senior Assistant City Attorney.

The court considered the administrative record, the pleadings of the parties
and the argument of counsel.

ORDER GRANTING LAND USE APPEAL AND
REMANDING TO THE PIERCE COUNTY HEARING
EXAMINER FOR FURTHER PROCEEDINGS. - 1

RICHARD ARAMBURU
JEFFREY M. BUSTIS
ATTORNEYS AT LAW
SUITE 208, COLLEGE CLUB BUILDING
608 MADISON STREET
SEATTLE 98104
(206) 825-8610
FAX (206) 882-1378

ATTACHMENT

1 I. CONCLUSION PURSUANT TO RCW 36.70C.130

2 Based on the record, pleadings and argument, the court concludes that
 3 Petitioner Stanzel has carried the burden of establishing that the following standard,
 4 pursuant to RCW 36.70C.130, has been met: The land use decision of the Pierce
 5 County hearing examiner, wherein the examiner decided that it did not have the
 6 authority to compel the City of Puyallup to provide water service, was an erroneous
 7 interpretation of the law, even after allowing for such deference as is due the
 8 construction of applicable law by Pierce County and its hearing examiner.

9 II. ORDER

10 A. The Land Use Petition of Michael Stanzel is hereby granted; that portion
 11 of the Report and Decision (Conclusion 6, page 10, and Decision) of the Pierce
 12 County Hearing Examiner dated July 26, 2007 which concludes that he lacks
 13 jurisdiction to make a condition that would require the City of Puyallup to provide
 14 water to the property of Mr. Stanzel is reversed, the court determining that the
 15 Hearing Examiner has authority to compel water service to the Petitioner;

16 B. The conclusion of the Pierce County Hearing Examiner that Mr. Stanzel
 17 is entitled to water service from the City of Puyallup is hereby affirmed, subject to
 18 Mr. Stanzel meeting the usual permitting and informational requirements of any
 19 applicant for comparable water service within the City.

20 C. The court remands this matter to the Pierce County hearing examiner for
 21 further proceedings. The Pierce County hearing examiner has the power to require
 22 the City of Puyallup to provide water service to Petitioner Stanzel's property, and the
 23 power to determine the reasonableness of the conditions that the City may impose
 24 for providing water service to Petitioner Stanzel.

25 D. Petitioner Stanzel shall cooperate and supply detailed plans to the City
 26 concerning his intended project at his 6224 114th Avenue Court East property. The
 27

28 ORDER GRANTING LAND USE APPEAL AND
 REMANDING TO THE PIERCE COUNTY HEARING
 EXAMINER FOR FURTHER PROCEEDINGS - 2

RICHARD ARAMBURU
 JEFFREY M. EUSTIS
 ATTORNEYS AT LAW
 SUITE 200, COLLEGE OLIVE BUILDING
 808 MADISON STREET
 SEATTLE 98104
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1 City shall provide water for those purposes. If Petitioner Stanzel seeks to further
 2 develop his property, he is not automatically entitled to do so. He may need to
 3 make a further request of the City for additional water service.

4 E. This court will retain jurisdiction over any further proceedings in this
 5 matter.

6 F. The bifurcated Complaint for Damages which has been stayed by order
 7 of this Court on October 26, 2007 (Section §I, page 2) pending resolution of the
 8 LUPA claims set forth in the Land Use Petition, shall be stayed for an additional
 9 thirty days following entry of this order to allow the parties to appeal this order, if
 10 they so choose. If no party seeks an appeal, then the parties are directed to
 11 propose to the Court a case schedule (agreed, if possible) to govern the Complaint
 12 for Damages.

13 III. ASSESSMENT OF COSTS

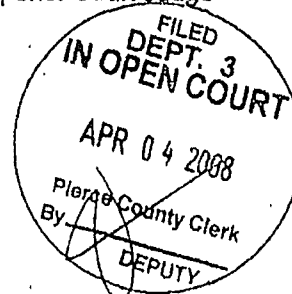
14 Pursuant to RCW 36.70C.110, the cost of preparing the record is assessed
 15 as follows: Petitioner Stanzel and Respondent City of Puyallup shall each pay half
 16 of the cost incurred by the Pierce County hearing examiner to prepare the record
 17 on review.

18 DONE IN OPEN COURT this 4 day of April 2008.

19
 20
 21 Honorable Thomas P. Larkin
 Superior Court Judge

22 Presented by:

23 Richard Aramburu
 24 J. Richard Aramburu
 25 WSBA 466
 Attorney for Petitioner Michael Stanzel



26
 27
 28 ORDER GRANTING LAND USE APPEAL AND
 REMANDING TO THE PIERCE COUNTY HEARING
 EXAMINER FOR FURTHER PROCEEDINGS - 3

RICHARD ARAMBURU
 JEFFREY M. EUSTIS
 ATTORNEYS AT LAW
 SUITE 209 COLLEGE CLUB BUILDING
 605 MARION STREET
 SEATTLE 98104
 (206) 428-8816
 FAX (206) 428-1370

1 Approved for Entry; Notice of
2 Presentation Waived:

3 CITY OF PUYALLUP

4 Kevin J. Yamamoto
Kevin Yamamoto, WSBA #18992 26787

5 Michael C. Walter, WSBA #15044

6 PIERCE COUNTY

7 David St. Pierre
8 David St. Pierre, WSBA #27888

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ORDER GRANTING LAND USE APPEAL AND
REMANDING TO THE PIERCE COUNTY HEARING
EXAMINER FOR FURTHER PROCEEDINGS - 4

RICHARD ARAMBURU
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SUITE 200, COLLEGE OLIVE BUILDING
600 MADISON STREET
SEATTLE 98104
(206) 825-9618
FAX (206) 822-1378

Carolyn Lake

From: Kevin Yamamoto [KYamamoto@cl.puyallup.wa.us]
Sent: Wednesday, August 10, 2011 3:32 PM
To: Carolyn Lake
Subject: RE: Spice v. Puyallup, Pierce County Superior Court No. 07-2-11653-0

Ms. Lake:

I have scheduled a meeting to discuss your client's demand next week. Key personnel are not available this week. I will contact you after the meeting. In the interim, please refrain from re-initiating court proceedings.

Kevin J. Yamamoto
Acting City Attorney
City of Puyallup
333 South Meridian
Puyallup, WA 98371
Telephone: 253-435-3609
KYamamoto@cl.puyallup.wa.us

This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. secs. 2510-2521, is an attorney-client communication if transmitted to the City of Puyallup staff, contractors or agents, is legally privileged and confidential, and only for the use of the intended recipient. If the reader of this message is not the intended recipient, the reader is hereby notified that any unauthorized review, dissemination, distribution, forwarding, or copying of this message is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail or call the sender at (253) 841-5698, and destroy all copies of the original message. Thank you for your cooperation.
Please help to maintain the wellbeing of the environment by refraining from printing this e-mail message unless necessary.

From: Carolyn Lake [<mailto:clake@goodsteinlaw.com>]
Sent: Thursday, August 04, 2011 9:42 AM
To: Kevin Yamamoto
Subject: Spice v. Puyallup, Pierce County Superior Court No. 07-2-11653-0

Please see attached.

Carolyn A. Lake

Goodstein Law Group PLLC 501 South "G" Street Tacoma, WA 98405
253.779.4000 office 253.229.6727 cell 253.779.4411 fax

CONFIDENTIALITY NOTICE

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"An appeaser is one who feeds a crocodile, hoping it will eat him last." Sir Winston Churchill

ATTACHMENT

13

Appendix 1 **CHART OF SUBJECT PROPERTY OWNERSHIP and MANAGEMENT INTERESTS**

Effective date	Action	Instrument of Authority for Spice & Plexus LLC to Act	Basis of Authority	Status of property interest Parcel 7705000191	Legal Authority for Spice /Plexus to Maintain Lawsuit
September 5, 2003	LLC formed by Mathews	LLC Certificate App 9	Ms Mathews obtains a Washington State Secretary of State issued certificate of formation for Mathews Investments, LLC.		
October 18, 2003	Mathews signs letter granting authority to Mathews	Authorization Letter App 10	Authorization Letter granted Spice authority to act as owner's agent for property owned by Mathews Investments, LLC.		
Jan 8, 2004	Mathews issues Promissory Note in favor of Spice	Promissory Note App 11	Promissory Note is secured by Property		
February 28, 2004	Mathews grants Spice a power of attorney	Durable Power of Attorney (DPA) App 12	Mathews to Spice – The DPOA is very broad. The DPOA allows Spice to "exercise or perform any act, power, duty, right or obligation whatsoever that I [Doris Mathews] now have or may hereafter acquire[]", and also "to...sue for...tangible property and property rights...." <i>Id.</i> The DPOA also included that "I grant my agent [Ted Spice] full power and authority to do everything necessary in exercising any of the powers granted here as fully as I might or could do if	Property owned by Mathews, but Spice had "full powers" to act via DPA.	Via DPA as Power of Attorney for Ms Mathews

4758

Effective date	Action	Instrument of Authority for Spice & Plexus LLC to Act	Basis of Authority	Status of property interest Parcel 7705000191	Legal Authority for Spice /Plexus to Maintain Lawsuit
April 22, 2004	Mathews forms LLC to develop the Subject Property	Mathews creates Plexus LLC. Spice is Managing Member. App 13	personally present." <i>Id.</i> RCW 25.15.295: The Managing Member's powers include, quote, "To preserve the limited liability company's business or property as an ongoing concern to prosecute and defend actions and proceedings whether civil, criminal, or administrative."	The Subject Property is listed as an asset of the LLC	Per RCW 25.15.295, as managing member of the LLC
August 29, 2007	LUPA ACTION FILED.				
December 1, 2007	Mathews signs 1 of 2 Quit Claims to Spice	Quit claim from Mathews to Spice App 14	Mathews transfers 1/3 interest in Property to Spice	Property listed as asset of Plexus LLC; Spice owns 1/3 Mathews 2/3	RCW 64.40.010(3) & 020 Cause of action for damages defines a property interest as "any interest or right in real property in the state." (emphasis added) The statute does not limit its scope to property owners, but instead to any person or entity with "any interest or right in real property." Here Plaintiffs Spice & Plexus are the owners of an interest in the property and are applicants for development.
June 9, 2009	Mathews signs 2 nd Quit Claim to Spice	2 nd Quit claim from Mathews to Spice App 15	Mathews transfers remaining 2/3 interest in Property to Spice; now Spice is 100% owner.	Property listed as asset of Plexus LLC; Spice owns 3/3	RCW 64.40.010(3)& 020 - Here Plaintiffs Spice & Plexus are the owners of an interest in

4759

Effective date	Action	Instrument of Authority for Spice & Plexus LLC to Act	Basis of Authority	Status of property interest Parcel 7705000191	Legal Authority for Spice /Plexus to Maintain Lawsuit
					the property and were applicants for development.
December 8, 2009	Mathews passes				
October 5, 2012	Probate Court issues order after jury trial changing 25% ownership to Spice & 75% of Mathew's Estate	Court Order Confirms Spice Continuing Property Interest App 16	RCW 64.40.010(3)	Spice owns 1/4 Mathews 3/4; Order is silent as to Plexus LLC and status of property as asset of the LLC	RCW 64.40.010(3) & 020 - Here Plaintiffs Spice & Plexus are the owners of an interest in the property and were applicants for development.
June 21, 2013	Trial Court issues Summary Judgment Order dismissing Spice & Plexus RCW 64.40 & other actions	Court Order Confirms Spice Continuing Property Interest - remains in effect App 16	RCW 64.40.010(3)	Spice owns 1/4 Mathews 3/4; Order is silent as to Plexus LLC and status of property as asset of the LLC	RCW 64.40.010(3) & 020 - Here Plaintiff Spice & Plexus are the owners of an interest in the property and were applicants for development.
July 1, 2013	Spice & Plexus File Reconsideration of Dismissal all Plaintiffs' RCW 64.40 and other claims	Court Order Confirms Spice Continuing Property Interest - remains in effect App 16	RCW 64.40.010(3)	Spice owns 1/4 Mathews 3/4; Order is silent as to Plexus LLC and status of property as asset of the LLC	RCW 64.40.010(3) & 020 - Here Plaintiff Spice & Plexus are the owners of an interest in the property and were applicants for development.
July 1, 2013	Puyallup Files Motion for Attorneys Fees				

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Effective date	Action	Instrument of Authority for Spice & Plexus LLC to Act	Basis of Authority	Status of property interest Parcel 7705000191	Legal Authority for Spice /Plexus to Maintain Lawsuit
September 10, 2013	Court issues Order Denying Reconsideration				
October 10, 2013	Appeal filed by Spice & Plexus; <u>Plaintiffs Note on the record the passing of Mathews</u>	Court Order Confirms Spice Continuing Property Interest - remains in effect App 16	RCW 64.40.010(3)	Spice owns 1/4 Mathews 3/4; Order is silent as to Plexus LLC and status of property as asset of the LLC	RCW 64.40.010(3) & 020- Here Plaintiffs Spice & Plexus are the owners of an interest in the property and were applicants for development.
December 13, 2013	Court enters Order Granting Fees and Costs Against Plaintiffs				

4761

May 20 2013 4:25 PM

KEVIN STOCK
COUNTY CLERK
Hon. Judge N. 07-2-11635-0
12 April 2013
Hearing set 9:00 AM

IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

TED SPICE AND PLEXUS DEVELOPMENT,
LLC, and DORIS E. MATHEWS
Petitioners,

NO. 07-2-11635-0

DECLARATION OF ETHAN
OFFENBECHER

v.

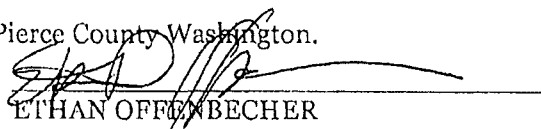
PIERCE COUNTY, a political subdivision,
and CITY OF PUYALLUP, a municipal
corporation

Respondents.

1. I, Ethan Offenbecher make this declaration based on personal
knowledge.
2. I am the author of the attached Report prepared on behalf of Petitioners.

I declare under the laws of perjury for the State of Washington that the foregoing
statement is true and correct.

Signed this 20th day of May 2013 at Pierce County Washington.


ETHAN OFFENBECHER

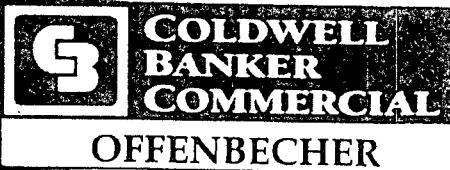
Appendix 2

DECLARATION OF ETHAN OFFENBECHER

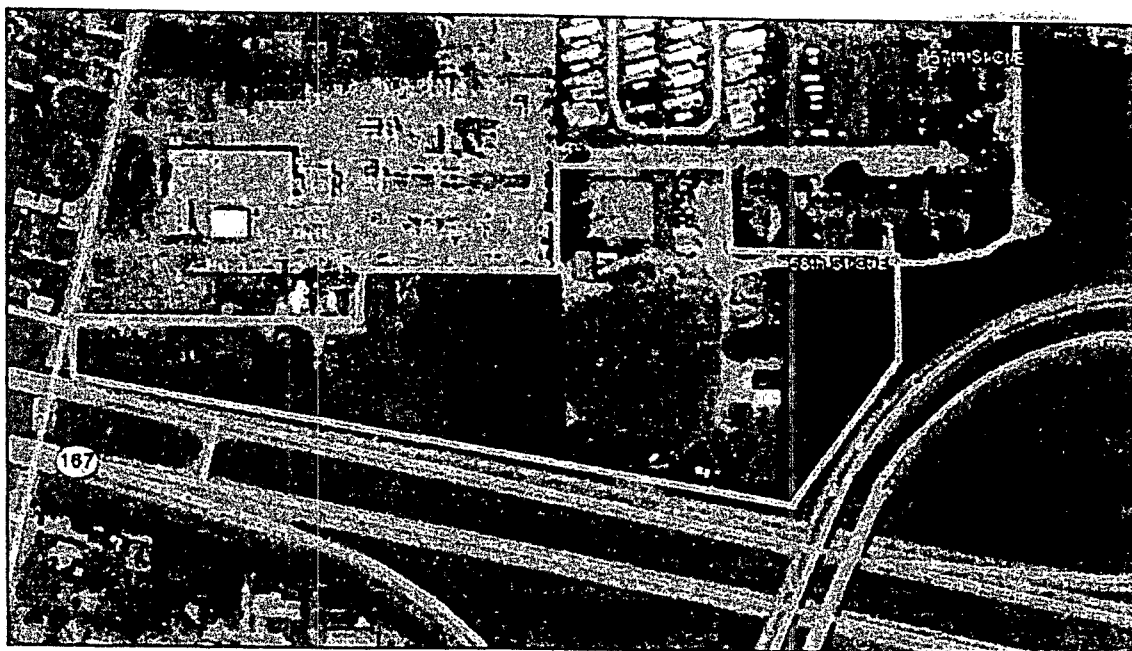
- 1
130520. pldg. Dec of Ethan .docx

GOODSTEIN LAW GROUP PLLC
501 S. G Street
Tacoma, WA 98405
243-779-4000
fax 253-779-4411

4762



Milwaukee Business Park
11003 58th St Ct E
Puyallup, WA 98372



Profitability Analysis

Prepared by
Ethan Offenbecher, CCIM
December 5, 2010

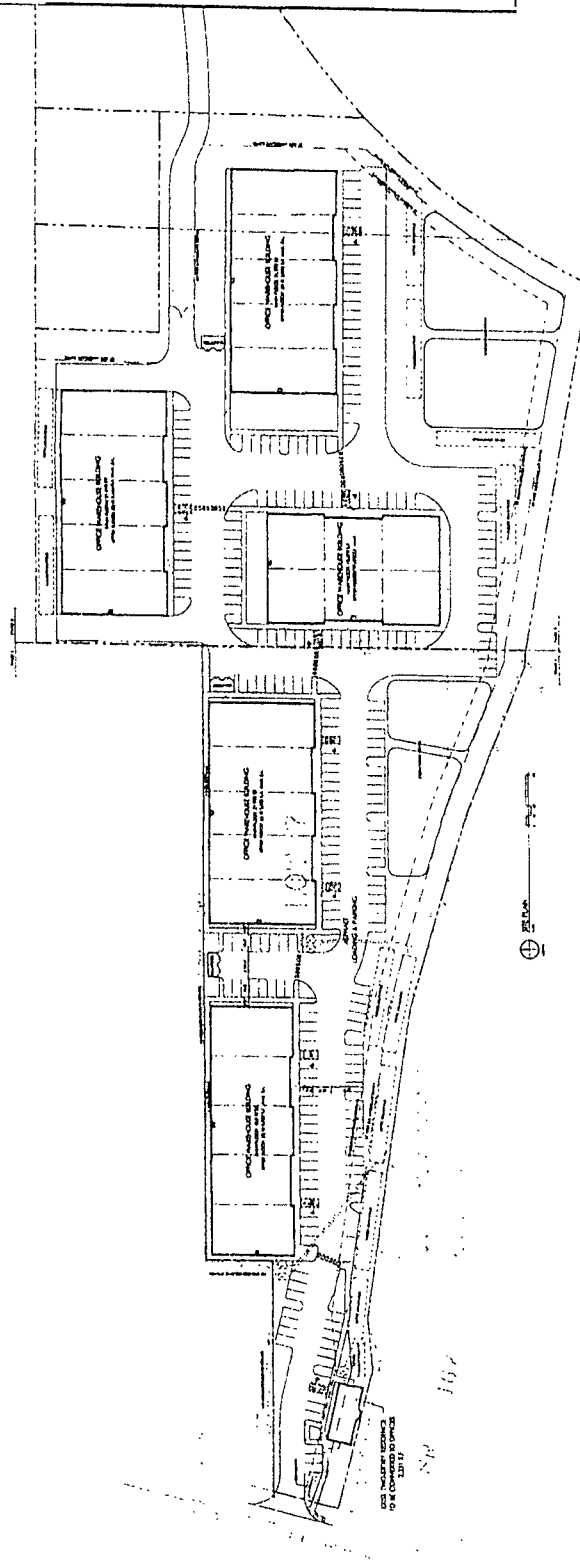
Coldwell Banker Commercial Offenbecher
101 South Meridian, Puyallup, WA 98371
(253)840-5574
www.offenbecher.com

4763

MILWAUKEE CONDO PARK - PHASE I & II

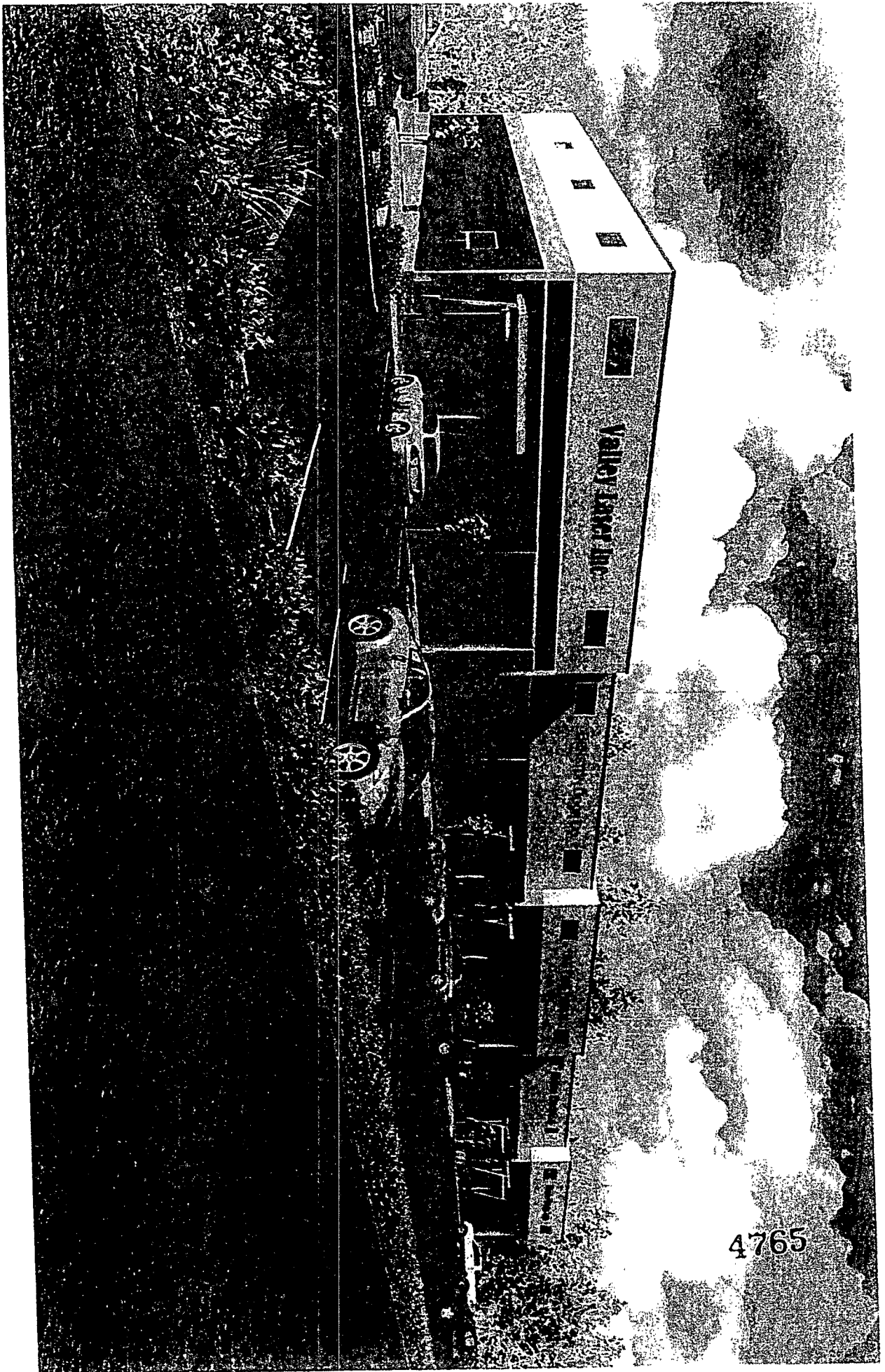
TED SPICE INVESTMENT PROJECT

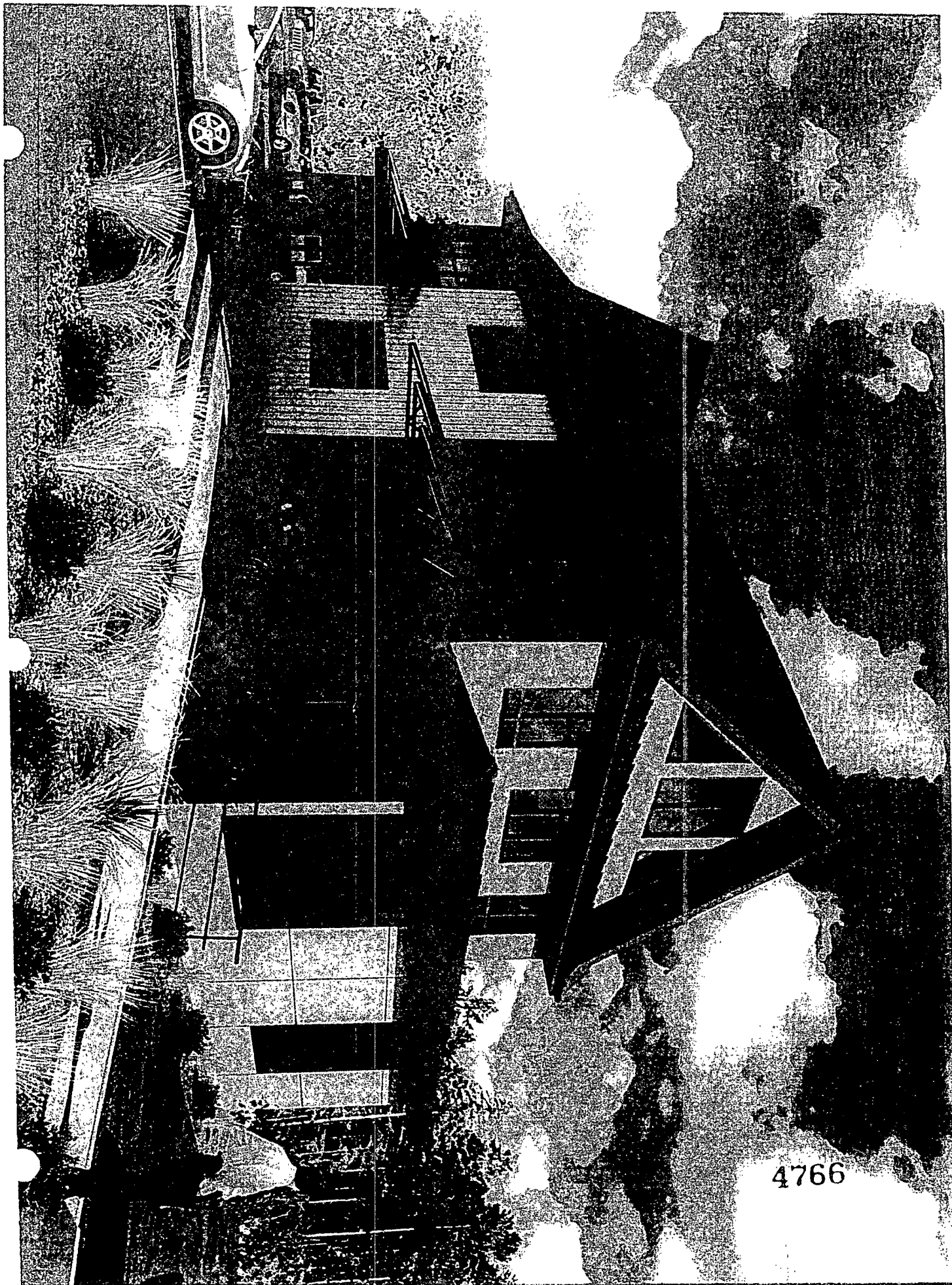
PUYALLUP, WASHINGTON



MILWAUKEE CONDO PARK
TED SPICE INVESTMENT PROJECT
By Andrew J. Anderson
11/11/11

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COLDWELL BANKER COMMERCIAL
OFFENBECHER
101 SOUTH MERIDIAN
PUYALLUP, WA 98371
OFFICE (253) 840-5574
FAX (253) 840-0152
www.offenbecher.com

December 3, 2010

Ted Spice,
Milwaukee Business Park
PO Box 634
Sumner, Washington 98390

**RE: Brokers Opinion of Lease Value 2005-2010
Milwaukee Business Park
11003 58th Street Court East
Puyallup, WA 98372**

Dear Mr. Spice,

This letter is written in response to your request to provide written documentation of the Fair Market Value (FMV) of the Milwaukee Business Park and to determine a Fair Market Value (FMV) for the lease and sale of the business park space for the years 2005 and 2010 as well as to calculate the potential profit that could have been earned during that period of time. The property is located at 11003 58th Street Court East Puyallup, WA 98372.

Subject Property

The subject property is located in unincorporated Pierce County on Milwaukee Avenue East just North of Hwy 167 in Puyallup, WA. The property is currently improved with several dwelling structures, however, there has been a proposed development of the property for a business park including office, industrial and wholesale retail users. The property is zoned Employment Center (EC) in Pierce County. EC allows a wide variety of industrial uses with some limited commercial uses including professional office, wholesale trade, and personal service uses (see attached zoning exhibit). The highest and best use for this site is for development of industrial, manufacturing and distribution tenants with supporting administrative office and wholesale retail components.

Phase I of the Milwaukee Business Park consists of (2) 21,600sf industrial buildings and one 2300sf 2 story office building, for a total of 45,500sf in Phase I. Phase II consists of (2) 21,600sf and one 17,500sf industrial buildings for a total of 60,700sf in Phase II.

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Base Year Assumptions:

The developer allegedly should have received permits in 2004 and could have begun construction thereafter. The average construction period in a project after receipt of site development would be 8-12 months, so the base year of 2005 is appropriate. In comparison, the most recent comparable information available is for the year 2010. Therefore, we are providing a FMV and potential expected income analysis comparing 2005 to 2010.

Lease Rate Assumptions/Definitions:

Lease rates for industrial product are quoted in this market on a price per square foot per month, plus the cost of operating expenses or triple net (NNN) expenses. In a NNN lease the cost of all building operating expenses (taxes, insurance and maintenance) are passed through to the tenant. Industrial leases quote a Shell Rate which is the rate the tenant pays for the building shell, before any office or showroom build out. Office Rates are charged for any office or showroom build out over and above the building shell on a per square foot basis. The Total Rent (before NNN) divided by the square foot of the space is known as the Blended Rate.

Value – Income Approach

The Income Approach to valuation is the most commonly used approach to valuing tenanted commercial properties since it utilizes both the income and expenses to a property and compare the quality of tenant, location, condition of the building, and length of lease. To determine the income value we take the income on the property, less the standard market vacancy losses (est. 7.5%), to determine a Net Operating Income (NOI). Then divide the NOI by a common Capitalization Rate (CAP rate) for comparable investment properties to determine the Fair Market Value of the property.

2005 Industrial Market

Demand for industrial space was on the rise in 2005, marked largely by the improvement in the South Puget Sound economy and the growth in container traffic by the Port of Tacoma. Developers such as Knapp Development, Tarragon Development, Opus Northwest, Northwest Building LLC and Panattoni Development were building major speculative projects. Some 1.5 million square feet of distribution buildings were set to be finished by these developers in early 2005. Demand was so high, that many of these speculative projects were leased before completion.

According to an article in the Puget Sound Business Journal in February of 2006, investors (buyers) of these leased projects, "the combination of unprecedented demand in the Puget Sound's South End industrial market and lack of supply holds the promise of long-term returns, so interest from the capital markets was high last year and will be equally high this year." As a result developers who sold these projects were seeing a decline in CAP rates and a rise in both rents and sales prices.

2005 Financial Analysis:

The attached lease comparable spreadsheet shows an Average Shell Rate of \$.48/sf and Office Rate of \$.69/sf. Therefore, assuming an average office/showroom build out of 15%, the average blended rate for 2005 was \$.58/sf plus NNN. For the remodel of the existing 2 story structure, the newly constructed office would attain \$1.00 per sf per month.

Comparable income properties were being valued at between 7.0% and 7.3 % CAP rates, thus a CAP rate of 7.15% applies to determine value.

2005 Project Value (Income Approach)

Phase I	SF	Blended Rate	Monthly Rent	Annual Rent
Warehouse	43,200	\$0.58	\$25,056	\$300,672
Office building	2300	\$1.00	\$2,300	\$27,600
Total Phase I	45,500		\$27,356	\$328,272
Phase II				
Warehouse	60,700	\$0.61	\$37,027	\$444,324
Total Phase II	60,700		\$37,027	\$444,324
Total Phase I and II	106,200		\$64,383	\$772,596

Gross Rental Income *	\$772,596
Plus NNN reimbursements	\$0.14
Potential Gross Income	\$786,349
Less Vacancy	7.50%
Effective Gross Income	\$728,404
Less NNN Expenses	\$0.14
Net Operating Income (NOI)	\$713,536

$$\text{Value} = \frac{\text{NOI}}{\text{CAP Rate}} = \frac{\$713,536}{7.15\%} = \$9,979,527$$

In 2005, lenders were consistently approving deals in the 75% loan to value range, so the initial down payment would have been 25% of the value, or \$2,494,882 (\$9,979,527 x 25%).

$$\text{Value} = \frac{\text{NOI}}{\text{CAP Rate}} = \frac{\$592,597}{7.50\%} = \$7,901,292$$

Summary

The average developer would expect to achieve a profit equal to 10% on their initial investment. Under this assumption, if this project had been built in 2005 the expected cash flow before taxes would have been \$249,488 per year (\$2,494,882 x 10%). Over the 6 years between 2005 and 2010, the project would have been expected to earn \$1,496,928 (\$249,488 x 6 yrs) in profit for the developer.

Based on the revaluation due to the fall in market rates between 2005 and 2010, the project potential loss of value is calculated as follows: \$9,979,527 - \$7,901,292 = \$2,078,235 in addition to the additional market risk, higher vacancies, and more tenant incentives required due to lower demand in the 2010 industrial market.

In summary, the potential loss in income and equity between 2005 and 2010 for the Milwaukee Business Park is:

Income	\$1,496,928
Equity	\$2,078,235
Total Potential Loss	\$3,575,163

If you have any questions or wish to discuss this matter further, please contact me at my office at 253-840-5574.

Best regards,



Ethan Offenbecher, CCIM
Vice President

2005 Sumner/Puyallup Industrial Lease Comps

Address	Total SF	Shell Rate	Office Rate	Lease Type
2920 142nd Ave. E. Sumner, WA (*Sulte 106)	8,120	\$0.52	\$0.70	NNN
13701 E. 24th St. Sumner, WA	140,000	\$0.48	\$0.75	NNN
4524 Tacoma Ave. Sumner, WA	22,424	\$0.45	\$0.65	NNN
133 23rd St. SE. Puyallup, WA	10,200	\$0.50	\$0.70	NNN
2313-2319 E. Pioneer Way, Puyallup, WA	53,863	\$0.43	\$0.65	NNN
1350 Thornton Ave. SW. Pacific, WA	11,000	\$0.45	\$0.70	NNN
136 8th St. Pacific, WA	9,000	\$0.50	\$0.70	NNN
Average	36,372	\$0.48	\$0.69	

4771

Industrial Lease Comparables Puyallup/Sumner 2010

Address	City	Building Size	Lease Type	Lease Rate/SF	Property Type
2409 112th St E	Puyallup	13,120	NNN	\$0.45	Industrial
5501 West Valley Hwy E	Sumner	26,110	NNN	\$0.45	Industrial
13701 24th St	Sumner	20,000	NNN	\$0.45	Industrial
13701 24th St	Sumner	20,000	NNN	\$0.39	Industrial
13799 24th St	Sumner	18,000	NNN	\$0.39	Industrial
2313 E Pioneer Way	Puyallup	53,863	NNN	\$0.45	Industrial
914 Valley Ave NW	Puyallup	17,226	NNN	\$0.42	Industrial
914 Valley Ave NW	Puyallup	17,247	NNN	\$0.38	Industrial
801 Valley Ave NW	Puyallup	43,342	NNN	\$0.40	Industrial
15022 E Valley Hwy	Sumner	32,500	NNN	\$0.40	Industrial
15911 99th Ave Ct E	Puyallup	19,500	NNN	\$0.39	Industrial
4800 E Valley Hwy	Sumner	29,743	NNN	\$0.38	Industrial
13610 52nd St E	Sumner	33,000	NNN	\$0.32	Industrial
1725 Puyallup Ave	Sumner	33,000	NNN	\$0.20	Industrial
Average		26,904		0.39	

Coldwell Banker Commercial Offenbecher



Ethan Offenbecher, CCIM

Coldwell Banker Commercial
Offenbecher

101 South Meridian
Puyallup, WA 98371
Phone: (253) 840-5574
Fax: (253) 840-0152
Mobile: (253) 222-1003
Email: ethan@offenbecher.com

Background

Ethan is a Principal at Coldwell Banker Commercial Offenbecher and serves as our Sales Manager overseeing our Brokerage Department. Ethan attended Washington State University and earned his undergraduate degree at Seattle University after which he helped launch Coldwell Banker Commercial Offenbecher in 2008. Ethan successfully completed his CCIM designation, which is currently held by only 6% of practicing commercial real estate agents in the world.

Ethan specializes in commercial sales and leasing in Pierce, King and Thurston Counties. He has completed commercial real estate transactions in excess of \$100,000,000 during his 10 year career. He has a proven track record working with extremely complex transactions, demonstrated by multiple institutional client needs, site acquisition, projects, and assemblage transactions. He has consistently been a Top Producer, and in 2008 was named the Number One Sales Professional for Coldwell Banker Commercial in Washington State.

Primary Specialty

Office, Land, Site Acquisition and Property Disposition

Awards

Coldwell Banker Commercial Gold Circle of Distinction, 2008
CBC Top Two Percent in the Company, 2008
CBC Number One Sales Profession-Washington, 2008
Business Examiner 40 under 40 Winner, 2005

Languages

English

Designations

Certified Commercial Investment Member
Institute of Real Estate Management

Partial Client List

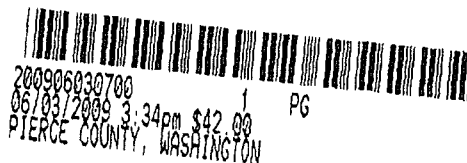
MultiCare Good Samaritan Hospital
City of Puyallup
Cafaro Shopping Center Developer
Walmart
Pierce College

4773



OFFENBECHER

WHEN RECORDED RETURN TO:
TED SPICE
BOX 2133
SUMNER, WASHINGTON 98390



QUIT CLAIM DEED

THE GRANTOR(S): DORIS E. MATHEWS (A WIDOWED WOMEN) in said property for and in consideration of GIFT in hand paid, conveys and quit claims to:

TED SPICE (A SINGLE MAN) the following described real estate, situation in the County of Pierce, State of Washington together with all after acquired titled the grantor(s) herein: **Legal Description:** THAT POR OF L7 DESC AS FOLL BEG 60 FT S OF NE COR L7 TH W 594.6 FT TH S 64.54 FT TH W 226.67 FT TO MILWAUKEE AVE TH SWLY ALG SD AVE TO S LI OF L7 TH E TO SE COR TH N 195.6 FT TO BEG ALSO THAT POR OF L 8 LY N OF N LI OF STATE HWY EASE OF REC SE 22-20-04E OUT OF 019-0 & 024-1 SEG J-3167 SS EXC ANY POR IN STATE HWY

PARCEL#7705000191

Address: 11003 58th Street Court East Puyallup

ABBREVIATED LEGAL: (Required if full legal not inserted above)

TO HAVE AND TO HOLD ONE THIRD: the said tract of land, with all singular the rights, members and appurtenances thereof, so that neither Grantor nor any other person claiming under them shall at any time claim or demand NO MORE THAN ONE THIRD to any right, title or interest to the said tract of land or its appurtenances.

STATE OF WASHINGTON)
COUNTY OF PIERCE)

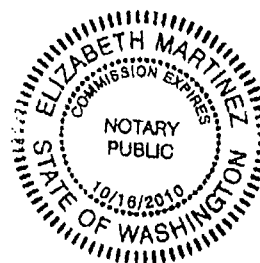
Doris E. Mathews
Doris E. Mathews

I certify that I know or have satisfactory evidence that Doris Mathews is person(s) who appeared before me, and said person acknowledged that he/she/they signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated December 1, 2007

[Signature]
Notary Public in and for the State of Washington residing at Puyallup

My commission expires: Oct 16 2010



Appendix 14

06/03/2009 3:30pm PROBER1
EXCISE COLLECTED: \$0.00
JAN SHABRO, AUDITOR
PIERCE COUNTY, WA

4213352 2 PGS
PRO. FEE: \$5.00
STATE FEE: \$5.00

ATTACHMENT 1

4879

42-



200912210036 1 PG \$62.00
 12/21/2009 09:07:38 AM
 PIERCE COUNTY, WASHINGTON

WHEN RECORDED RETURN TO:
 TED SPICE
 PO BOX 2133
 SUMNER, WASH. 98390

QUIT CLAIM DEED

THE GRANTOR(S) DORIS E. MATHEWS in said property for and in consideration of GIFT in hand paid, conveys and quit claims to:

TED SPICE (A SINGLE MAN) the following described real estate, situated in County of Pierce, State of Washington together with all acquired titled the grantor(s) herein: **Legal Description:** THAT POR OF L7 DESC AS FOLL BEG 60 FT'S OF NE COR L7 TH W 594.6 FT TH S 64.54 FR TH W 226.67 FT TO MILWUKEE AVE THE SWLY ALG SD AVE TO S LI OF L7 THE E TO SE COR TH N 195.6 FT TO BEG ALSO THAT PORT OF L8 LY N OF N LI OF STATE HWY EASE OF REC SE 22-20-040E OUT OF 019-0 & 024-1 SEGI-3167 SS EXC ANY POR IN STATE HWY

PARCEL# 7705000191

ADDRESS: 11003 58th Street Court East Puyallup Washington 98372

Abbreviated Legal; (Required if full Legal not inserted above)

TO HAVE AND TO HOLD THE REMAINING THREE QUARTERS INTEREST; The said tract of land mobbles and buildings, with all singular rights, member and appurtenances thereof, so that neither grantor nor any other person claiming under them shall at any time claim or demand any right, title or interest to said tract of land or its appurtenances.

STATE OF WASHINGTON
 COUNTY OF PIERCE

Doris E. Mathews
 DORIS E. MATHEWS

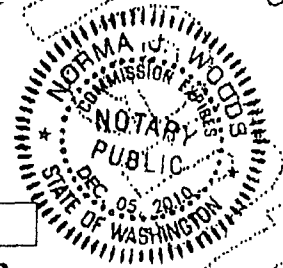
I certify that I know or have satisfactory evidence that DORIS MATHEWS is person(s) who appeared before me. And said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated 6/9/09

Norma J. Woods - 2706-15944 St. Ct. E. Tacoma, WA 98445
 Notary Public in and for the State of Washington residing at Puyallup Tacoma
 My commission expires: Dec. 5, 2010

12/21/2009 09:04:53 AM RCAROVA 4227402 3 PGS
 EXCISE COLLECTED: \$0.00 PROC FEE: \$5.00
 AUDITOR
 PIERCE COUNTY, WA TECH FEE: \$5.00

Appendix 15



ATTACHMENT 2

4880

For reference only, not for re-sale.

2017 MAR -1 AM 9:50

COURT OF APPEALS, DIVISION II, STATE OF WASHINGTON
OF THE STATE OF WASHINGTON

TED SPICE AND PLEXUS
DEVELOPMENT, LLC,
Appellants,

v.

PIERCE COUNTY, and CITY OF
PUYALLUP, a municipal
corporation

Respondents.

BY cm
No. 45476-9-II DEPUTY

DECLARATION OF SERVICE

The undersigned declares that I am over the age of 18 years, not a party to this action, and competent to be a witness herein. I caused this Declaration and

1. REPLY BRIEF OF APPELLANTS/PETITIONERS TED SPICE AND PLEXUS DEVELOPMENT, LLC
2. APPELLANTS' MOTION TO FILE OVERLENGTH REPLY BRIEF
3. APPELLANTS' MOTION TO ACCEPT REPLY BRIEF

to be served on February 28, 2017 on the following parties and in the manner indicated below:

David St.Pierre, Deputy Prosecuting Attorney
Pierce County Prosecuting Attorney/Civil Division
955 Tacoma Avenue South, Ste. 301
Tacoma, WA 98402-2160

[X] by United States Mail

Michael C. Walter
Keating Bucklin McCormack Inc PS
800 Fifth Avenue, Ste. 4141
Seattle, WA 98104-3175

[X] by United States Mail

Kevin Yamamoto
Joe Beck
City of Puyallup Legal Department
333 S Meridian
Puyallup, WA 98371

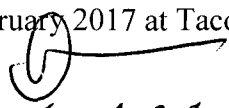
[X] by United States Mail

Tyler Shillito
Smith Alling, P.S.
1501 Dock St.
Tacoma, WA 98402

[X] by United States Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 28th day of February 2017 at Tacoma, Washington.

By: 
Carolyn A. Lake
Carolyn A. Lake, WSBA #13980
Attorneys for Petitioners Spice & Plexus